

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA
LAS VEGAS DIVISION

IN RE:)	CASE NO: 06-10725
)	CHAPTER 11
)	
USA COMMERCIAL MORTGAGE COMPANY,)	Las Vegas, Nevada
)	
)	Monday, November 13, 2006
Debtor.)	(9:54 a.m. to 11:03 a.m.)
)	(11:22 a.m. to 11:37 a.m.)
)	(11:46 a.m. to 12:06 p.m.)

MOTIONS HEARING

BEFORE THE HONORABLE LINDA B. RIEGLE,
UNITED STATES BANKRUPTCY JUDGE

Calendared Motions: See page 2

Appearances: See page 3

Court Recorder: Helen Smith

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CALENDARED MOTIONS:

#1 MOTION TO AUTHORIZE A SHORT-TERM FORBEARANCE FOR THE MARLTON SQUARE 1ST LOAN, AND TO GENERALLY AUTHORIZE SHORT-TERM LOAN FORBEARANCES AND FULL RELEASES AND RECONVEYANCES FOR LOANS PAID OFF IN FULL (AFFECTS DEBTORS USA COMMERCIAL MORTGAGE COMPANY AND USA CAPITAL FIRST TRUST DEED FUND, LLC), DE #1448;

#2 MOTION FOR RELIEF FROM STAY PROPERTY: LOAN SERVICING AGREEMENT FOR DIRECT LOAN TO BOISE/GOWAN, LLC., DE #1273;

#3 DISCLOSURE STATEMENT FOR SECOND AMENDED JOINT PLAN OF REORGANIZATION DATED NOVEMBER 6, 2006, DE #1755;

#4 MOTION TO ENFORCE ORDER GRANTING DEBTORS' MOTION TO DISTRIBUTE FUNDS, DE #1389;

#5 MOTION TO WITHDRAW AS ATTORNEY OF RECORD FOR FRANK LEE RAYMOND, DE #1703;

#6 FIRST APPLICATION FOR COMPENSATION FOR REIMBURSEMENT OF EXPENSES OF COMMITTEE MEMBERS FOR OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS OF USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, FEES: \$0.00, EXPENSES: \$1,447.08, DE #1508

APPEARANCES FOR:

Debtors:	<p>ANNETTE JARVIS, ESQ. P.O. Box 45385 Salt Lake City, UT 84145</p> <p>JEANETTE McPHERSON, ESQ. Schwartz & McPherson Law Firm 2850 S. Jones Boulevard Suite 1 Las Vegas, NV 89146</p>
Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC:	<p>CANDACE CARLYON, ESQ. Shea & Carlyon, Ltd. 701 Bridger Avenue Suite 850 Las Vegas, NV 89101</p>
Official Committee of Executory Contract Holders of USA Commercial Mortgage Company:	<p>GERALD GORDON, ESQ. GREG GARMAN, ESQ. Gordon Silver 3960 Howard Hughes Parkway 9th Floor Las Vegas, NV 89169</p>
SPCP Group:	<p>AMY N. TIRRE, ESQ. Kummer Kaempfer Bonner 5585 Kietzke Lane Reno, NV 89511</p> <p>JAMES C. MCCARROLL Reed Smith, LLP 599 Lexington Avenue NEW YORK, NY 10022</p>
Frank Raymond Lee:	<p>DAMON DIAS, ESQ.</p>
Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC:	<p>MARC LEVINSON, ESQ. Orrick Herrington & Sutcliffe, LLP 400 Capitol Mall Suite 3000 Sacramento, CA 95814</p> <p>ANNE M. LORADITCH, ESQ. Rox Rothschild 3800 Howard Hughes Pkwy., Suite 500 Las Vegas, NV 89169</p>

APPEARANCES FOR: (CONTINUED)

Stanley Alexander Trust, ROBERT LePOME, ESQ.
et al.: 10120 S. Eastern Ave., #200
Henderson, NV 89052

Official Committee of ROB CHARLES, ESQ.
Unsecured Creditors for Lewis & Roca, LLP
USA Commercial Mortgage 3993 Howard Hughes Parkway
Company: Suite 600
Las Vegas, NV 89169

Official Committee of EVE KARASIK, ESQ.
USA Capital First Trust CHRISTINE PAJAK, ESQ.
Deed Fund, LLC, et al.: Stutman Treister & Glatt, P.C.
1901 Avenue of the Stars
12th Floor
Los Angeles, CA 90067

U.S. Trustee: AUGIE LANDIS, ESQ.
Assistant United States Trustee
(No address provided)

Las Vegas, Nevada; Monday, November 13, 2006; 9:54 a.m.

(Call to Order)

THE CLERK: All rise. Bankruptcy Court is now in session.

THE COURT: Be seated.

Okay, USA Commercial Mortgage appearances, please.

MS. JARVIS: Annette Jarvis for the debtors.

MS. MCPHERSON: Good morning, your Honor; Jeanette McPherson of Schwartzer and McPherson law firm on behalf of the debtors and debtors-in-possession.

MS. KARASIK: Good morning, your Honor; Eve Karasik and Christine Pajak of Stutman Treister and Glatt, Special Corporation, on behalf of the First Trust Deed Fund.

MS. CARYLON: Good morning, your Honor; Candace Carlyon of Shea and Carlyon on behalf of the First Trust Deed Fund Committee.

MR. LEVINSON: Good morning; Marc Levinson of Orrick on behalf of the Diversified Committee.

MS. LORADITCH: Good morning; Anne Loraditch of Beckley Singleton Chartered, Nevada counsel for Diversified Trust Deed Fund Committee.

MR. GARMAN: Your Honor, Greg Garman and Gerald Gordon of Gordon and Silver for the Direct Lender Committee.

MS. TIRRE: Good morning, your Honor; Any Tirre of Kummer Kaempfer Bonner on behalf of SPCP Group, LLC, local

1 counsel.

2 **MR. MCCARROLL:** Good morning, your Honor; James
3 McCarroll of Reed Smith, LLP, on behalf of SPCP Group, LLC, the
4 stalking horse bidder.

5 **MR. LePOME:** Good morning, your Honor; Bob LePome on
6 behalf of Dr. Stanley and others.

7 **MR. CHARLES:** Rob Charles from Lewis and Roca on
8 behalf of the Official Unsecured Creditors Committee of USA
9 Commercial Mortgage Company.

10 **MR. LANDIS:** Good morning, your Honor; Augie Landis,
11 Assistant United States Trustee.

12 **MR. DIAS:** Good morning, your Honor; Damon Dias on
13 behalf of creditor Frank Raymond Lee.

14 **THE COURT:** Okay.

15 All right, Ms. Jarvis, do you want to go ahead and
16 give us a status report update before we start, to the extent
17 there is any more beyond the disclosure statement?

18 **MS. JARVIS:** There's not a lot more beyond the
19 disclosure statement. The parties have been working very hard
20 to put together the disclosure statement, make the necessary
21 amendments, to add additional information to respond to your
22 Honor's concerns, and also to the two filed objections which
23 were by the SEC and the PBGC, and I think those have been
24 resolved.

25 We do have -- we filed last week amended plan and

1 disclosure statement to incorporate the compromises that have
2 been reached as well as to add information respecting those
3 changes and the response to the objections. We do have a few
4 more today which I will, in the course of the hearing, walk
5 through. They're mostly in the nature of technical amendments.

6 So with that, we've been continuing to collect loans.
7 I don't know that in the last week we've collected any, but we
8 do have some; I think one that we expected to be collected this
9 week that should have been funded I think today, and continued
10 those efforts.

11 **THE COURT:** Oh, while I have you here; have you seen
12 the motion Ms. Scann filed on behalf of Binford (phonetic)?

13 **MS. JARVIS:** Yes.

14 **THE COURT:** The question is what date do you want to
15 have that heard? Do you have any objection to having that
16 heard on November 28th?

17 **MS. JARVIS:** We would prefer not to have it on an
18 expedited basis. There are some -- it's an ongoing discussion.
19 This is something that has been discussed between the parties
20 for quite some time. We do want to make sure that we have
21 adequate ability to be able to respond to this because there is
22 a --

23 **THE COURT:** Okay. That was my concern.

24 **MS. JARVIS:** -- disagreement.

25 **THE COURT:** My inclination, I know Ms. Scann isn't

1 here, but it was my inclination if you didn't agree not to
2 shorten time because of the pressures we've got.

3 **MS. JARVIS:** Right; we would prefer not to shorten
4 time, your Honor.

5 **THE COURT:** Okay.

6 And this is something just to chew about during the
7 breaks and before we finish today. You know, I'm very
8 concerned about the 15th being a little short in light of the
9 fact that we've got to mail these out and it's going to cost --
10 and the package is going to be heavy. I'd be willing to give
11 you a date, 18th, 19th, or 21st. So if during the break you-
12 all want to think about doing that, then we can certainly do
13 that. I think that probably makes more sense.

14 **MS. JARVIS:** We appreciate that, your Honor. You're
15 correct, that it is an extremely short time table to get
16 everything mailed out.

17 **THE COURT:** Okay.

18 Okay, so let's go first to the Marlton; that's
19 probably the easiest.

20 **MS. JARVIS:** I think, your Honor, where it was left
21 last time, we had not filed the loan servicing agreement. We
22 have since filed a declaration of Mr. Alison with the loan
23 servicing agreement. This is a short-term forbearance; that
24 actually is only through I think it's November 19th, the end of
25 this week. We anticipate that it will be paid off during that

1 period of time.

2 The right to give a forbearance is something that is
3 granted to the loan servicer without requiring consent of the
4 investors in the loan. This is a very short-term one, and the
5 whole purpose of it is so that the loan can be in a position
6 where it can get refinanced, and that's what the issue is.

7 **THE COURT:** And more importantly, no lender has given
8 you an objection?

9 **MS. JARVIS:** No, that's correct.

10 **THE COURT:** No direct lender on that loan?

11 **MS. JARVIS:** That is correct.

12 **THE COURT:** Okay.

13 **MS. JARVIS:** And we did notice it to them as -- we
14 didn't send out the three-day notice because we don't need
15 their consent, but we did mail copies of the motion to every
16 lender that is in that loan.

17 **THE COURT:** Okay.

18 **MS. JARVIS:** So they were all notified that way, and
19 there were no objections.

20 **THE COURT:** Okay. Any additional comments from the
21 direct lenders committee?

22 **MR. GARMAN:** No, your Honor; I think we've more or
23 less worked this out by the end of the last hearing, which was
24 they have these rights under the loan servicing agreements.
25 They need to comply with them, but I don't want to give them

1 blanket authority on that uncomfortable line between a
2 forbearance, which is authorized --

3 **THE COURT:** Right.

4 **MR. GARMAN:** -- and an extension, which is not.

5 **THE COURT:** Right. I think better practice in the
6 future is to send the notice -- you can even send the notice
7 saying: 'Whether or not we need to send this notice, we're
8 sending it to you'. You have accomplished that by the notice
9 of the motion, so therefore whether it's on the forbearance
10 side or the modification side, you've complied and you have the
11 -- the servicer has got the right to do that, so I'll approve
12 that.

13 **MS. JARVIS:** Thank you, your Honor.

14 **THE COURT:** Okay. And the Canepa motion is off.
15 That's been resolved, correct?

16 **MS. JARVIS:** That's correct.

17 **THE COURT:** And on number five, the motion to
18 withdraw, I assume there's -- there's obviously no objection to
19 that, so that's granted.

20 And let's just go to item number --

21 **THE CLERK:** Judge, I'm sorry; Mark Diamond (phonetic)
22 called, the attorney from their law firm is here.

23 **THE COURT:** Well, there's no opposition, so --

24 **THE CLERK:** Just so he understands.

25 **THE COURT:** Okay.

1 **MR. DIAS:** Good morning, your Honor. This was our
2 motion and I understood that that was granted. There was no
3 opposition received in this matter. Damon Dias on behalf of
4 creditor Frank Raymond Lee.

5 **THE COURT:** Okay.

6 Okay, now let's just skip ahead to number six, the
7 compensation for the committee members.

8 **MS. LORADITCH:** Good morning, your Honor; Anne
9 Loraditch of Beckley Singleton Chartered.

10 Your Honor, this application requests approval of
11 reimbursement of expenses for two of the committee members:
12 Sara Katz, requesting the amount of \$928.97, and committee
13 chairman Robert Worthen (phonetic) requesting \$518.11. The
14 application was served on regular notice and there's been no
15 opposition.

16 **THE COURT:** And this was in connection with their
17 duties in meeting, et cetera?

18 **MS. LORADITCH:** That's correct; through the period of
19 August 31st, 2006.

20 **THE COURT:** Okay, so that's granted.

21 **MS. LORADITCH:** Thank you.

22 **THE COURT:** Okay. Now let's go to the disclosure
23 statement. And this is much better. I mean I think it's
24 fairly readable, to the extent anything like this can be
25 readable. But I think what might be helpful, you know, for the

1 record and for the purpose of those here and on the phone to go
2 through how the plan works, and I think in particular the
3 direct lenders compromise.

4 **MS. JARVIS:** Okay.

5 **MS. CARYLON:** Your Honor, do you have the summary
6 that was separately filed?

7 **MS. JARVIS:** You did; I think it's a --

8 **MS. CARYLON:** Three-page.

9 **MS. JARVIS:** -- three-page summary that we had filed
10 separately last week.

11 **MS. CARYLON:** Because that might be the easiest thing
12 to track through.

13 **THE COURT:** Is it in chart form or --

14 **MS. JARVIS:** No, it's narrative.

15 **THE COURT:** No, I don't have it.

16 **MS. CARYLON:** I don't know that it was linked to the
17 disclosure statement, unfortunately.

18 **MR. LEVINSON:** It was linked to the notice.

19 **MS. CARYLON:** It was linked to the notice,
20 Mr. Levinson.

21 **THE COURT:** I should have it; let me double check. I
22 certainly read the disclosure statement, and I read the
23 ballots.

24 **(Pause)**

25 **MS. JARVIS:** It was attached to the notice of filing

1 cover sheet summary of disclosure statement for debtors' second
2 joint amended plan, and it was e-filed on November 7th.

3 **THE COURT:** All I got in connection with the notice
4 of filing --

5 **MS. KARASIK:** I have an extra copy, your Honor.

6 **THE COURT:** Okay. I didn't get an -- was the notice
7 of hearing, solicitation procedures, and the ballot.

8 **MS. JARVIS:** We'll check. Do you have a copy?

9 **(Pause - the Court reviews documents)**

10 **THE COURT:** Notice of filing cover summary. Oh,
11 that's interesting; no, I did not get that.

12 **MS. JARVIS:** We had filed this, your Honor, as kind
13 of a more simplified summary of the plan, because we understand
14 even though we've simplified the language in the disclosure
15 statement, it is long, it is complex, and therefore the
16 committees and the debtors worked together to put together this
17 short summary.

18 **THE COURT:** You know, it is possible that I received
19 it in the sense that I had like three copies of this, one that
20 was delivered, one I had downloaded because I wasn't sure if
21 I'd have a chance to get a copy before I had to go to that
22 seminar. So after I read one copy, if it was attached to
23 another copy, it's possible I didn't get it, but -- I mean I
24 didn't see it but it's possible that it was given to me, but
25 it's not attached to the notice of filing the proposed notice

1 of confirmation.

2 Okay, go ahead then.

3 **MS. JARVIS:** It was separately filed from that; it
4 was filed with the notice --

5 **THE COURT:** Oh, okay.

6 **MS. JARVIS:** -- of filing cover sheets.

7 **THE COURT:** Okay.

8 **MS. JARVIS:** We'll check the docket to make sure it
9 shows up on the docket, but it was separately filed from the
10 notice of the confirmation hearing.

11 **THE COURT:** Okay.

12 **MS. JARVIS:** This kind of goes through a very short
13 summary of the plan, and it's intended to kind of be an
14 introduction so that parties understand.

15 The basic premise of the plan is that the five
16 debtors remain separate, and so each group of creditors are
17 distributed from or are paid from the assets of their own
18 debtor. However, there also are certain compromises that are
19 reached where there are certain, in some cases, waivers of
20 claims, in some cases transfers of money back and forth to
21 resolve inter-company claims and to make sure that the whole
22 plan works as far as funding for litigation that will go on
23 post-petition, et cetera.

24 And kind of to -- this summary also explains each
25 different type of claim. Let me first just go through the USA

1 Commercial Mortgage, a general discussion of that. We don't
2 believe -- we have classes for secured claims. I think we're
3 not aware of any secured claims, but in every instance, every
4 class we have secured claims, just in case there are some that
5 we don't know about, but we don't anticipate that there are
6 any.

7 Then in the USA Commercial Mortgage we have a class
8 of unsecured claims. That would include the claims of direct
9 lenders that would be filed if there is something that
10 Commercial Mortgage has not for the payment of their loans,
11 because they have their interest in their loans, but if they
12 have some claim beyond that for some harm that Commercial
13 Mortgage did to them, then those claims would be included in
14 that pot.

15 **THE COURT:** Now, I've forgotten; have we extended the
16 bar date for -- We did, did we not?

17 **MS. JARVIS:** To January 15th.

18 **THE COURT:** Okay.

19 **MS. JARVIS:** That is correct. But because it is a
20 pot plan, your Honor --

21 **THE COURT:** It doesn't matter, right.

22 **MS. JARVIS:** -- it doesn't matter. And, you know, we
23 have set forth in the disclosure statement projections on what
24 we estimate the returns to be, but we also set forth the
25 estimation of claims that we've used to determine that so that

1 you can tell that if the claims are a lot more than that, then
2 obviously the percentage return --

3 **THE COURT:** Because I suppose, for example, you know,
4 if it turns out that -- somebody could arguably file a claim
5 for the deficiency between what they put in and what they got
6 out, and there are two theories. One theory would be the
7 negligence of USA Commercial in making the loan, but on the
8 other -- And so the worst case basis is it could be all those
9 claims.

10 Now, of course, a number of those claims may not have
11 any relationship because it may well have been that it's just
12 like any other risk of loss in a real estate transaction.

13 **MS. JARVIS:** Exactly.

14 **THE COURT:** So the largest universe will know, the
15 largest universe would be -- well we won't know because we
16 don't have a lot of the loans, collected, right? But it
17 doesn't make any difference; it's a pot plan.

18 **MS. JARVIS:** Yes. And there also has been, as part
19 of the compromise between the unsecured creditors committee and
20 the direct lenders committee, we have proposed an alternative
21 dispute resolution procedure for dealing with those claims.

22 **THE COURT:** Okay.

23 **MS. JARVIS:** So hopefully there will be a way to deal
24 with them expeditiously and inexpensively, because a lot of
25 them may be claims that probably aren't really claims.

1 **THE COURT:** Uh-huh.

2 **MS. JARVIS:** Other ones are probably categorized in
3 several different classes. I mean you can identify what kinds
4 of claims would -- should be allowable and which shouldn't.

5 **THE COURT:** Okay.

6 **MS. JARVIS:** So that will be worked out and will be
7 filed within ten days before the confirmation hearing, the
8 alternative dispute resolution --

9 **THE COURT:** Okay.

10 **MS. JARVIS:** -- procedures.

11 Then in the USA Commercial Mortgage class, we also
12 have a class, and this has been added originally in the plan as
13 we filed it a week ago. We had put penalty claims, meaning
14 those usually filed by governmental agencies for non-pecuniary
15 losses, would be subordinated to the claims of other creditors
16 in that class. We've now put them in a separate class. I
17 think that's probably more appropriate.

18 And then we also have -- there is a class of
19 subordinated claims which are the claims of the non-debtor
20 insiders that will be subordinated to the payment of all other
21 claims in Commercial Mortgage.

22 With the First Trust Deed Fund and Diversified --
23 Well, let me go first to First Trust Deed Fund. Primarily
24 their assets are going to be liquidated through the sale to
25 Silver Point. And as you know, the USA Commercial Mortgage is

1 funded partially through the sale to Silver Point because the
2 sale of the servicing business goes into that estate and
3 partially through litigation, which will be pursued
4 particularly against all litigation, all parties out there, but
5 particularly against the non-debtor insiders. So --

6 **THE COURT:** And that's being pursued on behalf of
7 everyone or just --

8 **MS. JARVIS:** On behalf of everyone in Commercial
9 Mortgage. But the claims in Commercial Mortgage will include
10 the direct lender claims that we just discussed. It will also
11 include claims of Diversified as well. I believe under the
12 compromises First Trust Deed will not --

13 **MS. KARASIK:** No, they will.

14 **MS. JARVIS:** Oh, they will? They will. Okay, First
15 Trust Deed will also have a claim. So in other words, kind of
16 the residual claims all end up in this USA Commercial Mortgage
17 trust.

18 **THE COURT:** Okay.

19 **MS. JARVIS:** So those claims will be dealt with
20 together and, you know, distributed prorate, so the insider
21 litigation will be pursued.

22 It's funded not only by the money that comes in from
23 the sale to Silver Point, but it's also funded as well by
24 monies that have been collected for servicing fees and also
25 what we call the prepaid interest which, as part of the

1 compromise with the direct lenders, will be kept in the estate
2 and used both to distribute to creditors as well as to fund the
3 litigation against the non-debtor insiders. So that is part of
4 the claim as well.

5 I'll let Mr. Garman and Mr. Charles explain in a
6 minute a little bit more about the USACM direct lenders
7 compromise --

8 **THE COURT:** Okay.

9 **MS. JARVIS:** -- because there are compromises of
10 claims back and forth and I think they probably will be best at
11 describing that. So that's basically USA Commercial Mortgage.

12 First Trust Deed and Diversified are each liquidated
13 in their own way. First Trust Deed is liquidated through the
14 sale of its assets to Silver Point. Those funds will come in;
15 they will be distributed first to creditors. We don't
16 anticipate many creditors at all, but then to the equity
17 holders prorate.

18 They have reached -- I think First Trust Deed has
19 compromised with virtually everyone, all the other inter-
20 company debtors in the case. And in fact, maybe Ms. Karasik
21 could kind of give a little bit more of a summary of that since
22 these were -- the inter-company compromises were negotiated as
23 we discussed between the committees.

24 Diversified Trust Deed Fund will also be liquidated,
25 but it will be wound down -- It'll remain in existence until it

1 is wound down and its assets are distributed. Most of the
2 loans -- there are a few of the loans in the Diversified Trust
3 that will be serviced by Silver Point as part of the
4 transaction, the closing to Silver Point or whoever the winning
5 bidder would be. The remainder of the loans remain with the
6 Diversified estate and will be liquidated over time.

7 In addition, they have claims that they will pursue
8 as well against non-debtor insiders, and that will be part of
9 winding down their estate.

10 There are some issues between Diversified and
11 Commercial Mortgage, which, again, maybe I can have the
12 committees to address a little bit more that remain to be
13 resolved because Commercial Mortgage has a receivable against
14 IP. Diversified has a receivable under the 1090 loan against
15 IP, and there are some issues with respect to where the
16 proceeds of those belong, and that's an issue that is
17 continuing to be either worked out or will be, as part of
18 confirmation, determined by the Court. So once the assets are
19 completely liquidated in Diversified, then it will dissolve.

20 And again, we don't anticipate a lot of claims in
21 Diversified, but the claims will be paid in full and then the
22 remainders of the money will be distributed pro-rata to the
23 interest holders.

24 Realty and Securities will both be liquidated and
25 dissolved under state law. There is a compromise which has

1 been added in between Realty and the funds. Realty, as you'll
2 recall, managed the funds, and there are certain new
3 compromises in the plan with respect to either a waiver or a
4 subordination of claims. Then Realty waives certain management
5 fees that were due Realty as of the date of the bankruptcy
6 filing. And this was felt to be an appropriate compromise
7 since there are significant claims that the funds have against
8 the manager, and this resolved those claims in a way that
9 facilitates the rest of the inter-company compromises as well.

10 So that's basically kind of an overall view of how it
11 works, and maybe the committees could come up and talk a little
12 bit about the compromises.

13 **THE COURT:** Just -- I think it's the chart; I didn't
14 have the chart that showed the direct loans attached to my copy
15 of the disclosure statement, and that's understandable because
16 I know you're going to attach it.

17 Do you happen to have one prepared now? It's the
18 chart -- is it chart three, schedule three?

19 **MS. JARVIS:** It's the loan summary, after the loan
20 summary.

21 **THE COURT:** Or maybe you haven't established one yet.

22 **(Attorneys confer with each other)**

23 **THE COURT:** Exhibit -- Oh, no, that's the
24 relationship; not that one.

25 **MS. JARVIS:** There should -- I think the one we filed

1 on I think it was the 7th may have had one, but can I hand this
2 up to you?

3 **THE COURT:** Yes.

4 **(Ms. Jarvis provides the document to the Court)**

5 **MR. LEVINSON:** Is that Exhibit B to what?

6 **MS. JARVIS:** It's filed with the disclosure
7 statement, right?

8 **MS. KARASIK:** Yes, it was filed with the disclosure
9 statement.

10 **MS. CARYLON:** Docket number 1755, Exhibit 3 I
11 believe.

12 **THE COURT:** There are no exhibits attached to my
13 copy.

14 **MS. CARYLON:** Exhibit 2.

15 **MR. LEVINSON:** It's Exhibit 2; Exhibit 3 is the
16 ordered chart, or the disordered chart.

17 **(Attorneys confer with each other)**

18 **THE COURT:** Okay. There were none attached to the
19 red line. Is it in the original; maybe that's where I'd find
20 it?

21 **MS. JARVIS:** I think it was filed with the -- it
22 should have been filed with the original.

23 **THE COURT:** Okay.

24 **MS. JARVIS:** I think all the exhibits should have
25 been attached to the original as filed.

1 **THE COURT:** Okay. I'll look there then, because I
2 had read the red line, so it just didn't have the exhibits.

3 Okay, fine; that's good.

4 **MS. JARVIS:** Yes.

5 **THE COURT:** Got it. You can have yours.

6 Eileen, you can pass that one back.

7 **(The Clerk complies)**

8 **MS. JARVIS:** We have also in that vein, in adding in
9 additional information, there is a chart now in the disclosure
10 statement as well that talks about the loans that have been
11 collected --

12 **THE COURT:** Okay.

13 **MS. JARVIS:** -- post-petition as well, so there is,
14 as your Honor suggested, a lot more information for direct
15 lenders as far as what has gone on and the status of the loans
16 in the case.

17 **THE COURT:** Okay.

18 **MR. GARMAN:** Your Honor, I've been nominated to
19 discuss the direct lender USACM compromise, because there are a
20 lot of parts to this.

21 First, we've negotiated a --

22 **THE COURT:** I don't think your mike is close enough
23 to your face. You can raise it -- it's counterintuitive, yes.

24 **MR. GARMAN:** They fixed it, I think.

25 **THE COURT:** You press down to make it go up.

1 **MR. GARMAN:** Now it's up.

2 It's a comprehensive resolution that takes care of
3 all aspects of direct lenders. First, it identifies whose
4 loans they are; they'll be the direct lenders' loans. It deals
5 with servicing of those loans on a going forward basis. It
6 deals with how the loan servicing agreements will be dealt
7 with, and finally it deals with treatment.

8 Specifically, the plan contemplates that direct
9 lenders' loans do not constitute property of the estate. They
10 belong to each individual direct lender, and upon the effective
11 date of this plan and transfer out of the servicing rights,
12 those loan servicing agreements, the notes and the underlying
13 deeds of trust are not modified by these bankruptcy
14 proceedings.

15 If on the effective date of the plan the servicing
16 goes to Silver Point, direct lenders have the right at that
17 point to replace Silver Point with some other servicer provided
18 they comply with the terms of the underlying contracts and
19 applicable Nevada law.

20 So we've dealt with the loans, we've dealt with
21 servicing, we've dealt with substantive consolidation. There
22 will be done under this proceeding. There will be no re-
23 characterization claims brought by anyone expect for the
24 Diversified Fund maintains their right to bring a substantive
25 consolidation or re-characterization argument against direct

1 lenders. But given that there's no compromise with
2 Diversified, that was just a natural fallout of where we stand.

3 The claims of direct lenders have been broken down
4 into two aspects: There's the A-4 class and there's the A-5
5 class. The A-4 class deals with all of the monetary claims of
6 direct lenders, and by that I mean it deals with the prepaid
7 interest, it deals with unsecured claims from whatever source,
8 whether it be tort, contract or the like; and by that, the
9 claims we've talked about.

10 Simply because you have a non-performing loan doesn't
11 mean you have a claim against USA simply in their capacity as a
12 loan servicer. But if they fail to exercise remedies that have
13 damaged direct lenders, if they fail to comply in any other
14 material way with the terms of the loan servicing agreements,
15 direct lenders have the right to file claims. Those claims are
16 dealt with in the A-4 category, and they share pro-rata with
17 all other similar creditors in this plan, which would be the
18 unsecured class.

19 **THE COURT:** Now, you said prepaid interest was in A-
20 4; that's not correct, is it?

21 **MR. GARMAN:** I'm sorry, no, no.

22 **THE COURT:** Okay.

23 **MR. GARMAN:** Prepaid interest is not; I apologize for
24 that. All classes --

25 **THE COURT:** Because prepaid interest is a claim going

1 the other way?

2 **MR. GARMAN:** That's A-5; prepaid interest comes in A-
3 5. All monetary claims that a direct lender may have though
4 are dealt with in the A-4 category.

5 **THE COURT:** And they now have to January 15th to file
6 that claim?

7 **MR. GARMAN:** They have until January 13th --

8 **THE COURT:** Thirteenth.

9 **MR. GARMAN:** -- to file that claim, but as drafted,
10 you must -- direct lenders must file a claim prior to that date
11 if they seek to submit a ballot and vote as an A-4 creditor.

12 **THE COURT:** Okay.

13 **MR. GARMAN:** So the deadline has been extended simply
14 because there are circumstances out there that need further
15 explanation to certain direct lenders, and so we've given them
16 that time.

17 **THE COURT:** Sure. But if they want to -- so you've
18 made it clear in here that they've got till January 13th to
19 share?

20 **MR. GARMAN:** Right.

21 **THE COURT:** But if they want to vote, they have to
22 file it before the ballot deadline?

23 **MR. GARMAN:** Right.

24 **THE COURT:** Okay.

25 **MR. GARMAN:** Yes, your Honor.

1 The A-5 category is the category that deals with the
2 prepaid interest and is what we've called the compromise class.
3 The compromise class contemplates that direct lenders will be
4 relieved and there will be waivers and releases for a variety
5 of claims. Among those are all accrued, prepaid servicing fees
6 that were arguably owed by direct lenders to the company.

7 Now, one point of clarification I have to make: We've
8 negotiated a structure, and that structure has been in place,
9 and I think that we all still agree with that structure. But
10 facts and circumstances continue to change as we apply our
11 structure to this plan. So, over the last thirty-six hours, on
12 Saturday and Sunday, we've uncovered that certain facts weren't
13 as we expected them to be. So committees, I think all the
14 committees are going to be looking at the disclosure statement
15 that comes out of this hearing today to make sure that this is
16 still the deal they signed on to.

17 **THE COURT:** You know what I think would be helpful
18 regardless is to do a couple of hypotheticals in your
19 disclosure statement. I'm suggesting this -- And you know what
20 I would do? I think I'd take real people; you've disguised
21 their names, perhaps, sometimes it's hard to come up with a
22 hypothetical just using real facts, so that people could see,
23 okay, what happens to me if my loan never paid a dime but I was
24 paid Y dollars? And then other people whose loans performed
25 for a while and now they may perform, so maybe a couple of

1 hypotheticals might help.

2 **MR. GARMAN:** Okay; we can try and incorporate that.
3 The reality is that there are so many different fact patterns
4 here --

5 **THE COURT:** Oh, I know, permutations.

6 **MR. GARMAN:** -- that it's difficult to --

7 **THE COURT:** Exactly.

8 **MR. GARMAN:** -- to come up with that.

9 **THE COURT:** Exactly. And it's just a suggestion
10 because, you know, disclosure statements provide adequate
11 information, I think it's provided adequate information, I'm
12 getting ahead of myself, but it's making this easy and
13 understandable to read.

14 **MR. GARMAN:** And truthfully, that's the learning
15 curve we're all still on.

16 **THE COURT:** Right.

17 **MR. GARMAN:** But as we negotiated the structure, as
18 pieces came together, the accounting hadn't been done exactly
19 as any of the committees had anticipated that it would be for a
20 variety of reasons.

21 **THE COURT:** Okay.

22 **MR. GARMAN:** So we're still putting together the
23 mechanics of it, but I think that the structure is generally in
24 place.

25 So, releases for all accrued prepaid -- accrued but

1 unpaid pre-petition loan service fees. For example, in years
2 past USACM was paying direct lenders on a pre-petition basis
3 for performing loans, but former management wasn't taking loan
4 service fees. USACM has said they have a claim for that.
5 Direct lenders have asserted that they have defenses to that.

6 Then there are pre-petition accrued and unpaid loan
7 service fees on non-performing loans that they simply never
8 took out. Those are all being waived.

9 On a post-petition basis, the contractual service fee
10 as set forth in the loan servicing agreement, whether it be one
11 percent or three percent, is the amount that direct lenders
12 will pay from the petition date through the effective date, and
13 those are -- that is an interest of USACM that will be applied
14 to the trust.

15 The compromise also deals with the prepaid interest
16 in the larger netting term that we've determined. As a global
17 resolution to this, we've looked at it, and the A-5 class
18 contemplates that that is property of the estate under 541. So
19 that will remain an asset of the USACM estate to pay claims, to
20 the extent necessary administratives, and then obviously the
21 remainder of it will flow down to the USACM trust that
22 Mr. Charles has set up to pay the claims of all unsecured
23 creditors, including those of direct lenders.

24 **THE COURT:** Okay. So we know what's happened so far.
25 So we know what happened so far; let me make up a hypothetical.

1 Ms. Smith was paid five thousand dollars pre-petition on her
2 loans, of which only three thousand was performing.

3 **MR. GARMAN:** Right.

4 **THE COURT:** Okay? Post-petition, another thousand
5 has been received, but that was offset.

6 **MR. GARMAN:** Right.

7 **THE COURT:** So she didn't receive any new monies but
8 she now only owes one thousand dollars for prepaid. As of
9 confirmation, will the claim against her for the additional one
10 thousand be waived?

11 **MR. GARMAN:** No.

12 **THE COURT:** Not for servicing fees, but I mean
13 prepaid interest.

14 **MR. GARMAN:** No.

15 **THE COURT:** No.

16 **MR. GARMAN:** That will continue to be netted on a
17 going forward basis by whatever the replacement servicer is --

18 **THE COURT:** Servicer is.

19 **MR. GARMAN:** -- until that balance is out.

20 **THE COURT:** Okay. And then one that balance is paid,
21 then it's paid?

22 **MR. GARMAN:** Then it's paid.

23 **THE COURT:** And so when the balance is paid, that
24 person gets the money going forward?

25 **MR. GARMAN:** Right. And we determined that that was

1 the only way to make sure that it was --

2 **THE COURT:** Everybody was treated fairly.

3 **MR. GARMAN:** -- could be dealt with, right.

4 **MS. JARVIS:** And let me just add one other component
5 to that because if you take your example, so a thousand was
6 collected from the borrowers post-petition and it's held there,
7 but you also could have five hundred dollars or five hundred
8 that was netted against some other loans that were performing
9 that is held back in, you know, the bankruptcy estate. That
10 would all then come into the USACM estate, and she would only
11 have five hundred dollars then that would be left outstanding
12 that would be either collected from borrowers or netted after
13 the effective date.

14 **THE COURT:** Yeah, I think we're saying the same
15 thing.

16 **MR. GARMAN:** I think so, yeah.

17 **THE COURT:** Yeah.

18 **MR. GARMAN:** It gets tough in application on
19 individual facts, but I think, your Honor, we're saying the
20 same thing, which is that process will continue and the plan
21 contemplates that to the extent necessary, recovery extension
22 will be given to the statute of limitations to make sure that
23 this process is fully fulfilled, direct lenders aren't overpaid
24 on loans for which payoff post-confirmation --

25 **THE COURT:** But if somebody's loan was performing the

1 whole time, then all that gets withheld is -- Well, nothing
2 gets withheld vis-à-vis the estate; just the new servicer gets
3 their --

4 **MR. GARMAN:** Right, right.

5 **THE COURT:** Okay. I think it might be helpful to do
6 a chart so that people see, so they know what to anticipate.
7 This will save you time at the end. If you've got -- Do we
8 have a chart that shows how much yet needs to be repaid on some
9 of these loans?

10 **MR. GARMAN:** That's a work in progress on a daily
11 basis.

12 **THE COURT:** Okay.

13 **MR. GARMAN:** But I don't --

14 **THE COURT:** And of course the point is once these
15 loans get collected, then the principal will come in, and
16 that'll take care of it and they'll get their principal, and
17 that'll take care of the interest, because all that was prepaid
18 was interest, right?

19 **MR. GARMAN:** There are two loans, I believe, in which
20 there was prepaid principal, and the same process --

21 **THE COURT:** Oh, even though the loan didn't pay?

22 **MR. GARMAN:** Yeah, yes.

23 **THE COURT:** Oh.

24 **MR. GARMAN:** I think it's limited to two.

25 **MS. JARVIS:** Two.

1 **MR. GARMAN:** Two loans that there was prepaid
2 principal on?

3 **MS. JARVIS:** Yes, there were two.

4 **MR. GARMAN:** But the process works in an identical
5 fashion for those two loans. As the principal comes in, the
6 netting process is entirely the same on a going forward basis.

7 **THE COURT:** Okay.

8 **MR. GARMAN:** So, with that there's another component,
9 which is the loan service fees that have been held on a post-
10 petition basis, and we've tried to come up with a global
11 resolution.

12 Pursuant to this Court's order, three percent has
13 been held back from all direct lenders regardless of what your
14 contractual loan servicing agreement said. We've agreed that
15 whatever the loan servicing agreement says is your loan service
16 fee will be held by the debtor, and the remainder will be
17 returned to individual direct lenders but for one further
18 component, which is \$605,000.00 of that money which is being
19 held back, the spread between one percent and three percent,
20 will be used to reimburse the USACM estate for the allowed and
21 paid attorney's fees of the direct lenders' committee. That
22 doesn't constitute the entire fee that will be incurred through
23 the effective date, but it was part of the negotiations, and
24 that's what we came to.

25 So the way that works, your Honor, is that if you

1 have a -- And that's calculated as of principal balances owed
2 as of the petition date. So that \$605,000 is then spread
3 across those principal balances, and if you have a one percent
4 loan service fee, that amount will be on top of the one percent
5 you're paying to USA. But if you're a three-percenter, it
6 comes out of the spread between one and three.

7 And then finally, as the debtor indicated, we're
8 working with the unsecured creditors committee to come up with
9 an alternative dispute resolution process to make sure that we
10 don't have an unruly claims proceeding that unnecessarily
11 requires disaster before your Honor.

12 So, your Honor, we think this is a global compromise
13 that puts direct lenders in the position they need to be in and
14 saves us from having affirmative litigation commenced, either
15 by or against thousands of direct lenders, that could take
16 years.

17 **THE COURT:** Okay. Mr. Charles?

18 **MR. CHARLES:** Do you know John Dawson?

19 **THE COURT:** Yes.

20 **MR. CHARLES:** He wants to say the settlement on the
21 record that was totally different than we had talked about, and
22 I was terribly hurt, but that's not what happened here.

23 But there are two things I want to clarify with
24 Mr. Garman. One is the notion of waiving pre-petition, unpaid
25 annual loan servicing fees. The company has been paying the

1 bills out of servicing fees. At the beginning of the case,
2 essentially all of the interest that was collected was pre-
3 petition interest, and no one has said that the company needs
4 to write checks back to direct lenders for servicing fees
5 charged on that pre-petition interest.

6 So there is language to be worked out with
7 Mr. Garman's committee and an understanding to be reached, but
8 that's --

9 **THE COURT:** So in other words, as I understood his
10 compromise, the estate will be waiving claims against people
11 where the servicing fees really weren't paid, is that correct?

12 **MR. CHARLES:** There are really two components. That
13 is one component.

14 **THE COURT:** That's one component.

15 **MR. CHARLES:** Another component is if you looked at
16 the schedule of assets on Commercial Mortgage, you saw a line
17 item for \$5.8 million dollars rounded of accrued and unpaid
18 servicing fees, which we have understood to be servicing fees
19 charged on interest that hasn't yet been collected.

20 Since the petition date, something I believe
21 Ms. Smith has told us, north of a million three of that has
22 been collected and used. So that servicing fee has been used,
23 and we're not talking about writing checks back to direct
24 lenders for that.

25 Another big chunk of it was servicing fees on

1 Diversified loans. The Diversified committee, bless their
2 hearts, are not going to pay a servicing fee on things like the
3 1090 loan. And so the amount of potentially uncollected
4 accrued servicing fees is a relatively -- is not a huge number
5 but it is a material number, and that's the language that we're
6 working out with Mr. Garman's committee.

7 The other point about the servicing fees, some of
8 these agreements were ambiguous you could say when the
9 servicing fee in the agreement said 'up to X percent; for
10 example, up to three percent'. And in fact, there are more
11 variations than you've heard about before. Those are not
12 material but it's just frightening how many variations there
13 are.

14 The compromises, if it said 'up to three percent',
15 that means three percent. But again, Mr. Garman's point is
16 that to the extent there is an allocation of the direct
17 lenders' committees allowed fees, it's coming across pro-rata
18 among all of them. And on the 'up to three percents', it's
19 essentially coming out of what would have been their servicing
20 fee otherwise. There is also a compromise there -- very
21 parsimonious billers at Gordon and Silver, but nevertheless,
22 the Commercial Mortgage creditors are paying the significant
23 portion of what we estimate to be the allowed fees of the
24 direct lenders committee's counsel.

25 **THE COURT:** Okay.

1 **MS. KARASIK:** Good morning, your Honor; Eve Karasik
2 on behalf of the FTDF committee. And I will work through the
3 two compromises that the First Trust Deed Fund made. In this
4 case, we've pretty much settled with everybody at this point.
5 I mean, of course, we have the money, so we want to make sure
6 we're settled with everybody.

7 And it might be easy if you track along; I think this
8 is much simpler than Mr. Garman's and the unsecureds' deal.
9 And I'm not sure what draft you're working on, but if you go to
10 the inter-company claims section.

11 **THE COURT:** I've got the red line disclosure
12 statement hearing.

13 **MS. KARASIK:** And I'm looking at a clean one. But
14 the inter-company claims are after the classification.

15 **(Ms. Karasik confers with Ms. Jarvis)**

16 **THE COURT:** Oh, you know, I think you should probably
17 add an index to this as I'm thinking about it.

18 **MS. JARVIS:** Your Honor, if I could maybe hand up
19 some documents? We have made a bunch of technical changes, as
20 I explained.

21 **THE COURT:** Okay.

22 **MS. JARVIS:** I have actually clean copies of
23 everything that's been changed today and red lined from what
24 was last filed.

25 **THE COURT:** Okay.

1 **MS. JARVIS:** So I might hand these up because I think
2 Ms. Karasik is going to go through the newest version.

3 **THE COURT:** Okay.

4 **(Ms. Karasik confers with Ms. Jarvis)**

5 **MS. CARYLON:** And in these, your Honor, you'll see an
6 index but it's at the end.

7 **THE COURT:** Oh, okay.

8 **THE CLERK:** The one on the top.

9 **THE COURT:** All right, good.

10 **MS. KARASIK:** On the top, your Honor, is the clean
11 plan.

12 **THE COURT:** Okay. Oh, so you're referring to the
13 plan, okay.

14 **MS. KARASIK:** Yes, the clean plan on the top.

15 **THE COURT:** Uh-huh.

16 **MS. KARASIK:** I mean it's pretty much the same in
17 both the disclosure statement and the plan.

18 **THE COURT:** Okay.

19 **MS. KARASIK:** And it's page fifty-three.

20 **THE COURT:** Okay.

21 **MS. KARASIK:** This is the settlement between
22 Commercial Mortgage and the First Trust Deed Fund, and the
23 first one in the settlement is we fix our unremitted principal
24 claim, \$347,775.00 plus pre-petition interest.

25 The next part of the compromise is that First Trust

1 Deed Fund will retain an unsecured claim against Commercial
2 Mortgage. Now, this claim, just like all the other direct
3 lenders, is not going to be a claim for a deficiency; it's
4 going to be a claim for actual harm or breach. And right now
5 we're working on fixing the amount of that claim, and what
6 we've set up here is that that amount will either be agreed to
7 by the confirmation hearing or there will be an evidentiary
8 hearing.

9 Because there is going to be no post-effective date,
10 the First Trust Deed Fund, we're going to get this done by the
11 confirmation hearing and we're going to get it done by
12 agreement. I'm pretty sure about that.

13 Prepaid interest --

14 **THE COURT:** Now, just as an aside.

15 **MS. KARASIK:** Sure.

16 **THE COURT:** Procedurally, you know, since compromises
17 must be noticed and heard, make sure as soon as you reach that
18 compromise that you send notice I think of that compromise to
19 everyone. I think that's more prudent.

20 **MS. KARASIK:** Okay. We will --

21 **THE COURT:** Mr. Landis is our expert on procedure
22 here. Do you think -- or do you think that the notice of
23 confirmation hearing is sufficient as what's on the website?
24 What are your -- what's your preference?

25 **MR. LANDIS:** My preference would be if individual

1 compromises are reached that notice and the opportunity for a
2 hearing to object be given so that parties have the opportunity
3 to consider that separate from confirmation, Judge.

4 **THE COURT:** Okay.

5 **MS. KARASIK:** Your Honor, we do have the concept
6 here.

7 **THE COURT:** Right.

8 **MS. KARASIK:** And we will do our best to get this
9 done as soon as possible. I'm actually going to have a call
10 with our financial advisors tomorrow so that we're sure what
11 universe we're talking about.

12 **THE COURT:** And I hate to have you send notices to
13 everybody, but certainly as to the fund members.

14 **MS. KARASIK:** Right. And we can also --

15 **THE COURT:** But then to the universe of everyone.

16 **MS. KARASIK:** -- post it on the website?

17 **THE COURT:** Yeah. You know, maybe notice, let's do
18 that. I think that would satisfy it; that the compromise will
19 be placed on the website. And I think it's probably
20 appropriate to notice the fund members.

21 **MS. KARASIK:** Uh-huh.

22 **THE COURT:** But you don't have to notice the whole
23 other universe of lenders, investors, et cetera, because it's
24 too hard to sort out who are merely lenders and who are
25 investors on their loans, right? You have your list of

1 investors in your fund, right?

2 **MS. KARASIK:** Correct, your Honor.

3 **THE COURT:** Okay.

4 **MS. KARASIK:** And your Honor, we do have some other,
5 in the plan, subsequent, you know, documents that we've served
6 on other parties, and we certainly can provide in there; we can
7 give them notice that this will be on the website and that the
8 members will be served with just a notice that a compromise has
9 been reached.

10 **THE COURT:** I think that's appropriate. I think we
11 can give notice on the website. You put in the disclosure
12 statement that compromises that are done will be posted on the
13 website and that shall constitute notice.

14 **MS. KARASIK:** Okay.

15 **THE COURT:** But if it's a compromise involving any
16 particular fund, those fund members will be noticed. If it's a
17 compromise involving any particular set of lenders, I don't
18 think that we envision that. There are no particular loans
19 being compromised in here.

20 **MS. KARASIK:** No.

21 **THE COURT:** Okay.

22 **MS. CARYLON:** Since the disclosure statement and
23 summary says what the compromise will be and just not the
24 dollar amount, I don't know that it's really necessary to give
25 an additional notice of the dollar amount if we say, you know,

1 'We are trying to compromise this number. If we do, we will
2 place it on the website'. I would hope that would be
3 sufficient because --

4 **THE COURT:** I got the sense that you were talking
5 more about the dollar number. Is it just the dollar number
6 you're trying to compromise?

7 **MS. CARYLON:** A number of the compromises are just
8 dollar numbers --

9 **THE COURT:** You know, the only thing is --

10 **MS. CARYLON:** -- and some of the ones involving DTDF
11 are allocations, but they're basically a numerical compromise
12 between two amounts.

13 **THE COURT:** I still think -- That's good expect that,
14 you know, these numbers could be --

15 **MS. KARASIK:** Although, your Honor, could I say one
16 thing about this? This piece of the deal is really we call in
17 a term of art our 'schmuck insurance'.

18 **THE COURT:** Uh-huh.

19 **MS. KARASIK:** I mean we're pretty much taking our
20 sale, and that's going to be the predominant, the sale
21 proceeds. This is just -- there is a whole run out there, and
22 you'll see later; we give a piece of this to Diversified
23 actually. This is schmuck insurance. If somehow there's gold
24 that falls from the sky, we didn't want to, you know, negotiate
25 away --

1 **THE COURT:** Lose it; okay.

2 **MS. KARASIK:** -- everything. So it's really not a
3 significant piece. We don't expect it.

4 **THE COURT:** But it's going to be shared pro-rata
5 though, right?

6 **MS. KARASIK:** Yeah.

7 **THE COURT:** See, and that's the problem. I mean if
8 you compromise -- you know, you can have a compromise if the
9 compromise is one dollar less than what you claimed, and that's
10 the whole point of A and C (phonetic) properties.

11 **MS. KARASIK:** Right.

12 **THE COURT:** You've got to see whether or not it's a
13 fair compromise. So I think it would be appropriate -- I won't
14 make you do extra notice.

15 **MS. KARASIK:** Okay.

16 **THE COURT:** But do put in here that the amount that
17 will be compromised will be compromised from confirmation.
18 Please --

19 **MS. KARASIK:** Okay. We'll be clear about that.

20 **THE COURT:** -- look at the website; that'll be on
21 there.

22 **MS. KARASIK:** And we can also say, your Honor, the
23 deficiency claim will be something in the range of X.

24 **THE COURT:** Yeah.

25 **MS. KARASIK:** It's not going to be the full

1 deficiency claim; it'll be some amount that is less than that.

2 **THE COURT:** Okay.

3 **MR. LANDIS:** Rule 9019 governs, Judge, and basically
4 all it says is that on motion by the trustee and after notice
5 and a hearing, the Court may approve a compromise or
6 settlement. It's not specific to the dollar figures, but as
7 much information as can be provided, especially to the members
8 of the First Trust Deed Fund, should be. This seems like a
9 reasonable resolution.

10 **THE COURT:** Great, thank you. Okay, let's do it that
11 way.

12 **MS. KARASIK:** Okay; thank you, your Honor.

13 The next item of our compromise has to do with the
14 prepaid interest. That's approximately \$2.5 million. The
15 exact amount is in the disclosure statement and the plan. It's
16 already been netted, and there's no more to be paid. It's been
17 netted from collections, and USACM will keep it.

18 There is a management fee.

19 **(A cell phone rings)**

20 **THE COURT:** Turn all phones off.

21 **THE COURT RECORDER:** All cell phones must be turned
22 off in the courtroom at all times. Please; thank you.

23 **MS. KARASIK:** There is a management fee that we all
24 originally thought was paid to Realty and then shuttled over to
25 Commercial Mortgage. It actually turns out historically it was

1 only paid to Realty, which was part of the reason why we had to
2 then have a compromise this weekend with Realty. However,
3 post-petition, this amount has been -- I mean the services have
4 been provided by the mortgaging entity. The deal here is to
5 waive that fee altogether. It's \$78,000.00 per month. It's
6 tied to the principal balance of the loans.

7 To the extent we actually have paid, and there is
8 some dispute about whether we have, that will be repaid to the
9 fund or offset against other amounts we owe Commercial
10 Mortgage.

11 The servicing fee; the deal we cut on the servicing
12 fee is that the First Trust Deed Fund will be charged a one
13 percentage fee. We are one of those servicing agreements that
14 say 'up to three percent'. However, we have defenses because
15 it never was charged and this is how we compromised that
16 dispute. The fund would be charged a one percent annual
17 servicing fee from the petition date through June 30.

18 Commencing on July 1st, there will be a 2.5 percent
19 fee charged through the earlier of the effective date or
20 January 31st, 2007, and I'll explain why we have that date
21 limit in there in a second. And then to the extent there were
22 any pre-petition servicing fees outstanding, they'll be waived.

23 Now, the reason why we have this date is our concern
24 was if the plan doesn't get confirmed, we may need to recut
25 some of these deals. Now, I think what we've agreed is that

1 they will stay through January 31st. So we're not going to go
2 back on January 31st and say, 'No, we're not going to pay you
3 X, Y and Z anymore, but going forward we may not want to pay
4 you.' You may not want us to waive the management fee, or we
5 may recut these later. So we needed some time horizon on that.

6 Servicer advances. Servicer advances are the
7 foreclosure-related type costs provided for in paragraph four
8 of most of the servicing agreements. The deal we cut on the
9 servicer advances was that the First Trust Deed Fund, through
10 the effective date, would pay its proportionate share of these.
11 However, it would pay these only for what you would call the
12 ordinary course professional type.

13 So to the extent Ray Quinney or Mesirow or Schwartz
14 and McPherson were performing these types of services, we
15 wouldn't pay those, and that's because of the next compromise,
16 which is the fee allocation that we have agreed to. And the
17 fee allocation is \$125,000.00 per month for all the debtors'
18 professionals coming out of the fund, and we just didn't want
19 to pay it twice, in effect, so that's why we cut that deal.

20 Now, the date, the January 31st date I think I just
21 explained. We've reached an agreement on allocation of the
22 overbid and expense reimbursement and break-up fee, and that is
23 an 85/15 deal. It's not -- it's generally an 85/15 percent
24 deal, and that's not exactly -- if you look at the values of
25 the assets, that would be more like three percent and ninety-

1 seven percent, but this was part of our negotiation.

2 Now, there is a caveat there. There is a provision
3 for another split, but we wanted to file that under seal just
4 because it's very sensitive and we didn't want any bid
5 inclusion to occur. So we will be filing that with the Court.
6 I don't remember the exact date we decided to file it, but we
7 will be filing that well in advance of the confirmation
8 hearing. So that is the compromise with Commercial Mortgage.

9 And Mr. Charles, do you have any clarifications?

10 **MR. CHARLES:** An excellent summary, and that pretty
11 much tracks the words which also are very clear.

12 **THE COURT:** Okay.

13 **MS. JARVIS:** Let me just add that on Realty, the
14 waiver of the management fees is also tied to the subordination
15 or waiver --

16 **MS. KARASIK:** Yeah, I'm going to waive that one.

17 **MS. JARVIS:** -- of their claim as well.

18 **MS. KARASIK:** And then there are mutual releases
19 between the First Trust Deed Fund and Commercial Mortgage and
20 Securities and Realty.

21 **THE COURT:** Now, what about assignment of claims? In
22 other words, are any claims against insiders? And I read this
23 but I wasn't -- didn't quite understand it entirely.

24 **MS. KARASIK:** Well essentially, we do have a claim --
25 we have assignment of some assets to Diversified, which is the

1 next compromise I'm going to get to. First Trust Deed has a
2 claim in Commercial Mortgage, and will share in the non-debtor
3 insider litigation recoveries based on the pro-rata amount of
4 its claim rather than going out and prosecuting it itself. And
5 it will be a beneficiary of that trust. Distributions will be
6 made out of that trust to First Trust Deed holders, and --

7 **THE COURT:** But is there an assignment of any claims
8 you may have to Trust Deed Fund -- or whoever is prosecuting
9 the action against the insiders, or whomever?

10 **MS. KARASIK:** I guess our view was they're all sort
11 of the same claim, and we're just going to sit and take that
12 claim in the trust. That's basically how we envisioned it. It
13 really is --

14 **THE COURT:** But what if the argument was -- I'm
15 trying to think of some example besides an insider.

16 **MS. KARASIK:** Uh-huh. Well, we have claims against
17 Realty, for example, for mismanagement, and that one we're
18 subordinating in that --

19 **THE COURT:** Right.

20 **MS. KARASIK:** -- in that class. And our view is
21 we'll probably never get anything out of Realty ever, and I
22 need to talk to Mr. Charles about a technical issue there
23 because there will be no post-effective date First Trust Deed
24 Fund entity to settle it, so I may have to just delegate that
25 to the trust to do because the chances of ever getting anything

1 meaningful out of that, it just doesn't make sense to set up a
2 trust and have administrative costs.

3 **THE COURT:** Well how about let's try this, and maybe
4 it's covered by the servicer. Are there -- well, no, Silver
5 Point acquires all your rights to all those claims. So for
6 example, if somebody didn't perform on the loan and there are
7 guarantees out there, Silver Point gets that.

8 **MS. KARASIK:** Right.

9 **THE COURT:** That's right; okay.

10 **MS. KARASIK:** Okay, I'll move on to the Diversified
11 compromise.

12 **THE COURT:** Right.

13 **MS. KARASIK:** We are going to make what is called the
14 FTDF --

15 **THE COURT:** And let me just back up.

16 **MS. KARASIK:** Sure.

17 **THE COURT:** Let me suggest -- I don't mean to suggest
18 that there may be a need for assignment --

19 **MS. KARASIK:** Right.

20 **THE COURT:** -- of any causes of action or rights; I'm
21 just inquiring whether or not it was done. I'm not suggesting
22 that there need to be.

23 **MS. KARASIK:** Okay; thank you.

24 The first part of this compromise is that the First
25 Trust Deed Fund will pay -- will make what is called the FTDF

1 payment, and this is in two pieces. The first is \$500,000.00
2 to be paid on the effective date from the First Trust Deed Fund
3 to the Diversified Fund.

4 There's a second piece of it, a second \$500,000.00
5 that will come out of the overbid to the extent we have an
6 overbid, and that is the First Trust Deed payment.

7 Diversified has agreed to repay that payment upon
8 receiving what is called the First Trust Deed Fund base
9 recovery percentage, which is layman's terms really means our
10 sale proceeds less costs of -- you know, cost of the sale, cost
11 of the cases, all the claims that need to be paid before
12 interest; really our net recovery.

13 **THE COURT:** And the reason for this compromise if I
14 recall is because First Trust Deed Fund, I guess, and others
15 received the proceeds of principal of loans -- arguably
16 received principal of loans?

17 **MS. KARASIK:** It's really the re-characterization
18 Lemons argument --

19 **THE COURT:** Okay.

20 **MS. KARASIK:** -- and the potential, you know,
21 consolidation argument which we think is even more of a reach,
22 but just to put that away and be able to take the cash and move
23 on.

24 **THE COURT:** Okay.

25 **MS. KARASIK:** So there is a provision here for

1 repayment. The first \$500,000.00 is paid once essentially
2 Diversified reaches the same recovery that First Trust did, and
3 then the second is paid back with an adjustment for the time
4 value of money, and that second \$500,000.00 is paid back
5 according to that adjustment.

6 There are some assets and claims transferred to
7 Diversified. We're transferring our unremitted principal claim
8 to Diversified; that approximately \$350,000.00 claim, I
9 believe. We're transferring something that everybody refers to
10 as the Bice Energy (phonetic) loan, which is not a loan; it
11 actually has to do with some sort of a refinancing fee that I
12 don't know if they ever were able to secure or not, but we're
13 transferring that asset to Diversified.

14 And then something called the non-assignable
15 litigation claims, and for these types of claims we're thinking
16 of potential securities actions since we were a securities-
17 related entity, and those will go to Diversified. To the
18 extent First Trust Deed Fund needs to exist to -- or needs to
19 prosecute them for Diversified, Diversified will reimburse or
20 pay for that litigation.

21 And lastly, your Honor, --

22 **THE COURT:** So it will be prosecuting in Trust Deed
23 Fund's name is what you're saying?

24 **MS. KARASIK:** Right, right.

25 **THE COURT:** Okay.

1 **MS. KARASIK:** To the extent that entity needs to
2 exist in order to preserve those claims it will exist, but the
3 costs won't come out of the First Trust Deed Fund.

4 **THE COURT:** Okay.

5 **MS. KARASIK:** Lastly, your Honor, before we talked
6 about the claim that the First Trust Deed Fund will retain in
7 Commercial Mortgage, the unsecured claim. What First Trust
8 Deed has agreed to do is to assign to Diversified all its
9 recoveries under that claim until Diversified reaches its
10 eighty-five percent recovery, which means it has to receive an
11 eighty-five percent recovery on its original investment, net of
12 costs. And there are mutual releases between the two funds in
13 the plan.

14 And lastly, there's the Realty compromise which we've
15 touched on. Because of the confusion as to who actually was
16 owed or paid the management fees, again, management fees are
17 waived. In exchange, the First Trust Deed claim is
18 subordinated in Realty, and there will be releases between
19 those two entities.

20 **THE COURT:** Okay.

21 **MS. KARASIK:** Thank you.

22 **THE COURT:** Anybody want to add anything to the
23 terms?

24 **MS. KARASIK:** Mr. Levinson, do you have any comments?

25 **THE COURT:** You don't need to if you don't -- I mean

1 --

2 **MR. LEVINSON:** No, I was going to talk next anyway.

3 **THE COURT:** Okay.

4 **MR. LEVINSON:** Ms. Karasik's summary was accurate as
5 to the compromises with us. Our committee's goal is to repay
6 the \$500,000.00. We'd like nothing more than that.

7 Our compromise with Realty is similar expect we're
8 subordinating only the first \$50 million dollars of our claim.
9 We think in the end that's not going to matter much, but that's
10 the deal.

11 We have tried hard to negotiate an agreement with the
12 mortgage company, and we've been unable to do so. The sad part
13 is we have very good communication between the two of us; we
14 just haven't been able to reach a deal on any number of fronts.
15 So, in order to get the plan going and confirmed, which is
16 everyone's goal, we just agreed to disagree. And we will
17 continue to communicate and talk and beat one another's brains
18 in, and hopefully we will reach a compromise, but there's no
19 guarantee of that. If we can't reach a compromise, we'll be
20 back before you to fight out a number of different issues.

21 **THE COURT:** Well, I guess I'm concerned in the sense
22 that if, for example, you don't reach a compromise in a
23 substantive consolidation issue, how does anybody vote on
24 whether or not this is a good plan?

25 **MR. LEVINSON:** We understand that that would have to

1 be the subject of an objection to the plan which is filed by
2 the debtor --

3 **THE COURT:** Okay.

4 **MR. LEVINSON:** -- and not by the committee but which
5 we support. So we understand the time is growing short on
6 that.

7 **THE COURT:** Okay. So the point would be, if you
8 don't agree to it, you would just argue it can't be confirmed
9 because it could be substantively consolidated and then I guess
10 I'd have to have a hearing on that?

11 **MR. LEVINSON:** Yes.

12 **THE COURT:** An evidentiary hearing.

13 **MR. LEVINSON:** Well, it would just be an objection to
14 the plan; that's right.

15 **THE COURT:** Okay.

16 **MR. LEVINSON:** But, again, we're hoping we're not
17 going to get there. The kinds of issues we've been talking
18 about with the unsecured creditors committee have to do with
19 the size of our claim, and, this was said earlier, the
20 allocation, how it would be paid out, how we would share in the
21 compromise that you approved on this \$58 million dollar note
22 from investment partners. Remember, you said that it could be
23 shared according to whoever had the rights to it. You didn't
24 decide that because it wasn't before you. We've been talking
25 about that and we just haven't agreed, but we're continuing to

1 talk.

2 **THE COURT:** Okay.

3 **MR. LEVINSON:** One thing I did want to do in a
4 Landis-like fashion was --

5 **THE COURT:** And we have a new ELMO, so apparently you
6 can do it the other way now.

7 **MR. LEVINSON:** Well, I just wanted to -- Something
8 that Ms. Jarvis said before that wasn't quite right, and I want
9 to make sure we've got it right.

10 Number sixty-three is the definition of my fund's
11 unsecured claim, and what it does is it provides that we don't
12 have an agreement now, and if we have an agreement prior to
13 confirmation, we'll bring it to the Court's attention under the
14 noticing procedure, and we'll put it on the website and the
15 like.

16 But if we haven't reached agreement by that date, we
17 did not intend to litigate it that day. The idea was we would
18 litigate it in the future, and we don't say 'on the
19 confirmation date'.

20 **THE COURT:** Right.

21 **MR. LEVINSON:** The further idea is that if we could
22 make an agreement after confirmation but prior to the effective
23 date, then we'll come back to you of course because we're still
24 within your clutches. But after the effective date, we can
25 agree at any time that we don't have to come back to court.

1 And again, the goal being if we can avoid litigation, we'd like
2 to, and we've talked to one another but we just don't know.
3 But that's the time table for that.

4 **THE COURT:** Okay.

5 **MS. JARVIS:** Your Honor, in that vein, if you look at
6 the clean copy of the disclosure statement I just handed you a
7 copy of, and if you turn to page sixty-nine of that.

8 **THE COURT:** Okay.

9 **MS. JARVIS:** There is a section in the disclosure
10 statement entitled 'Remaining disputes between USACM and DTFD',
11 so those are defined and set forth in the disclosure statement.

12 **THE COURT:** Right. Well, the only thing was when I
13 read this the first time, I see they're there, I see you've
14 resolved how to disagree. What happens if you don't agree?
15 And I guess you're right; it comes down to you object to
16 confirmation, and I either say that should or shouldn't prevent
17 confirmation, and/or to the extent it's an amount, that clearly
18 can be determined separately. But to the extent it's an
19 integral part of the plan/qua-plan, then it's an objection
20 which I either grant or overrule.

21 **MR. LEVINSON:** That's correct, your Honor. The
22 substantive consolidation re-characterization are the show
23 stoppers that we have to decide. Other than that, we can fight
24 about it later.

25 **THE COURT:** Okay.

1 **MR. LEVINSON:** Thank you.

2 **THE COURT:** All right. Now, just to be clear before
3 I take comments. All I'm here today is to ascertain whether or
4 not there is adequate information in this disclosure statement.
5 I'm not making any judgments about whether or not any of these
6 plan provisions are good, are bad, should be or not be
7 confirmed.

8 So, with that, any further questions or comments
9 about the accuracy of the information in the disclosure
10 statement?

11 **MS. JARVIS:** Your Honor, if I could. We talked about
12 the summary of the disclosure statement. I think it's docket
13 number 1754.

14 **THE COURT:** Okay, thank you.

15 **MS. JARVIS:** So just to give that to you.

16 **MR. LePOME:** Attorney Robert LePome for Doctors
17 Alexander and other direct lenders.

18 I'm -- We're unclear from the disclosure statement
19 with regard to Diversified's position where they say there's
20 going to be no characterization except that Diversified may
21 bring an action against the direct lenders. The direct lenders
22 have very patiently been told 'Watch for the plan and see if
23 you can digest it and accept it, and don't file your adversary
24 proceeding.' Is there -- This really says that they can bring
25 an adversary proceeding just like we can, and I don't know

1 whether there's any time limit in the plan that says do that.
2 If there isn't and if it's coming, well, I need to tell my
3 people that we might as well file it tomorrow. Diversified may
4 want to speak on that.

5 **THE COURT:** Okay. And what do you mean by -- well,
6 let me hear your response on that.

7 **MR. LEVINSON:** I guess my response is: Huh? We
8 reserve the right -- we did not enter into an agreement -- a
9 settlement agreement with the direct lenders for a number of
10 reasons, but primarily because there isn't really that much of
11 an intersection between the Diversified committee and the
12 direct lenders unless we were to bring an action or adversary
13 or many actions to determine that their claims ought to be re-
14 characterized.

15 We understand the burden that we face on that, and
16 they have the right to bring whatever action --

17 **THE COURT:** And you mean re-characterized not as
18 prepaid interest?

19 **MR. LEVINSON:** Correct. The re-characterization is
20 'Hey, we're all in this together. We're all unsecured
21 creditors.'

22 **THE COURT:** I think you need to make that clear.
23 Mr. LePome is talking about something else I think. He's
24 talking about -- aren't you? Are you talking about the
25 distinction between 'Is this property of the estate or not

1 property of the estate'?

2 **MR. LePOME:** That's exactly right. He says -- In
3 other words, either you have a one-pot theory that's presented
4 to the Court or we have the direct lenders really own the loans
5 that they say they own. If they own the loans that they say
6 they own, we need -- the Court's never --

7 **THE COURT:** Well --

8 **MR. LePOME:** The Court's never ruled on that because
9 there's never been an adversary proceeding.

10 **THE COURT:** But by virtue of this confirmation, the
11 point is, and they should make it clear, if I confirm this
12 plan, it seems to me that as much as you want to reserve your
13 rights to re-characterize, it's not going to happen.

14 **MR. LEVINSON:** We understand, and that's why we're
15 going to have to object if we're going to object.

16 **THE COURT:** Okay. So --

17 **MR. LePOME:** That's what my question was really.
18 When is the time limit that they're going to file this re-
19 characterization or whatever they want to call their adversary
20 proceeding?

21 **THE COURT:** What I think what we should do is make it
22 clear that all these objections will have to be ruled on as a
23 part of -- In other words, you can reserve all your rights, but
24 I'm not going to confirm a plan that -- probably not. You'd
25 have to convince me somehow that there are rights that can be

1 reserved without a plan being confirmed.

2 **MR. LEVINSON:** Well, and also, your Honor, we
3 understand that if a plan is confirmed and it goes effective,
4 we ain't going anywhere.

5 **THE COURT:** That's right, because a plan does
6 specifically provide now, doesn't it -- Well, you know, that is
7 a good point because on one hand you reserve your rights, but
8 the plan doesn't say by virtue of confirmation, there is no re-
9 characterization, and you probably should add that in.

10 **MS. CARYLON:** Well, it does; it says --

11 **THE COURT:** That's --

12 **MS. CARYLON:** It says 'No substantive consolidation'.

13 **MS. JARVIS:** Yeah, it does.

14 **MS. CARYLON:** It's clear on that point. But we'll --

15 **THE COURT:** Well, but that's --

16 **MS. CARYLON:** We'll clarify that that's the sense.

17 **THE COURT:** That's different because substantive
18 consolidation only deals with property of the estate. The
19 argument is: Is the direct lenders' claims property of the
20 estate or not?

21 **MR. GARMAN:** And your Honor, let me speak for the
22 direct lenders first. I can --

23 **THE COURT:** And I recognize that this plan's intent
24 is that it be each lender has its own right to the property and
25 it's not property of the estate. I understand you can't agree

1 to that now, but I think if the plan's -- The plan needs to
2 take a position one way or the other. I think the position of
3 the plan is: Each direct lender's claim is a claim of that
4 lender to that loan.

5 **MR. GARMAN:** And your Honor, I think we need to be
6 careful here because there is no contractual privity between
7 the direct lenders and the Diversified Fund. There was no deal
8 to be struck, there was nothing for us to give them in exchange
9 for a release.

10 What we have here is there are going to be factual
11 findings made by this Court not only to approve this deal but
12 to transfer the servicing rights to someone else. And, most
13 importantly, Silver Point has factual findings that are going
14 to be necessary for it to buy these loans out of these estates.

15 I think that the parties are comfortable that
16 Diversified has its ability to object to this plan if they
17 think it's in their best interest to object. But come the
18 effective -- come confirmation, these issues are dealt with,
19 and I don't know that it's appropriate to start adding things
20 to the disclosure statement saying that third parties with whom
21 direct lenders have no contractual privity have either waived
22 or won't take any action. Frankly, I'm more --

23 **THE COURT:** Well, that's what the disclosure
24 statement says.

25 **MR. GARMAN:** It is, but there is no relationship here

1 to be resolved between the direct lenders and Diversified. If
2 we were outside of bankruptcy, Diversified would have whatever
3 rights they have outside of bankruptcy. They could always --
4 Diversified is not being resolved by way of this plan in its
5 entirety.

6 **THE COURT:** Okay.

7 **MR. GARMAN:** And to -- I think we're treading on some
8 dangerous --

9 **THE COURT:** I guess my point is this: Whatever the
10 plan purports to do, then that should be in the plan --

11 **MR. GARMAN:** Right.

12 **THE COURT:** -- such that if I -- we know when I deal
13 with the objections whether or not direct lenders are free of a
14 claim that somehow their loans constituted property of the
15 estate. I mean I think that's clear.

16 **MR. GARMAN:** Right. I would love a plan --

17 **THE COURT:** But I'm not sure it's in the plan.

18 **MR. GARMAN:** I would love a plan that says it's free
19 of all third parties, including Diversified, but I know I can't
20 get that either.

21 **THE COURT:** No, no, no. What I meant was -- because
22 the issue was is it property of the estate or not.
23 Confirmation of the plan will resolve whether or not the loans
24 held by direct lenders, including Trust Fund for that matter,
25 are property of the estate or not. And the current plan is

1 that they're not property of the estate; that each direct
2 lender holds their fractional interest in the loans, including
3 Diversified.

4 **MR. LEVINSON:** We understand.

5 **THE COURT:** Okay.

6 Okay, any other comments on the adequacy of the
7 information?

8 **MR. MCCARROLL:** Your Honor, James McCarroll of Reed
9 Smith on behalf of Silver Point.

10 Silver Point has reviewed the various drafts of the
11 disclosure statement as they've gone back and forth, including
12 two serial drafts that went out over the weekend. We are find
13 in substance with most of the information in the disclosure
14 statement, but there are a few statements that we believe need
15 a bit of clarification. Subject to some descriptive and
16 wording changes, I don't foresee any problem getting there, but
17 we're not quite there yet.

18 **THE COURT:** Okay.

19 **MR. MCCARROLL:** My partner is back at my office and
20 Silver Point's business people are working right now to get the
21 final few comments incorporated and to get them over to the
22 debtors. We've communicated with the debtors and counsel for
23 the committees, and we hope and expect to get comments over to
24 all parties this afternoon with, again, the hope that we'll
25 reach resolution either today or early tomorrow morning.

1 **THE COURT:** Okay.

2 Okay, with that, I'm prepared to approve the
3 disclosure statement once it's signed off by all the committee
4 members.

5 Now, let's take a recess and talk among yourselves
6 about timing because I'm very concerned about that December
7 15th date, especially since you're going to send it out by
8 first-class mail; it'll cost a fortune to otherwise. Well,
9 first-class mail, I think this big a package would take a week
10 to get there. You might check with the Post Office, but that's
11 my experience.

12 **MS. JARVIS:** Your Honor, we have been working with
13 BMC, you know, and we've can't get it out. I think their
14 feeling is the fastest we can get it done is five days.

15 **THE COURT:** Okay. And I've --

16 **MS. JARVIS:** And that is copying, mailing --

17 **THE COURT:** I've forgotten our schedules, but I could
18 also give you -- you know, you've got this January 3rd already.
19 I don't think anybody wants the week between December 25th and
20 January 1st. So I'll give you whatever days you need. I'll
21 just move off calendar what you need, so look at the calendar
22 and tell me what day. And like I said, I've forgotten your
23 Silver Point parameters, but I think it's better that way for
24 your own sanity.

25 One other timing issue; that's on the settlement

1 conference we had with the Stanfords.

2 **MS. KARASIK:** Standard?

3 **MS. JARVIS:** Standard Development?

4 **THE COURT:** Standard. Judge Glover is not going to
5 be here December 13th. I've got to assume that wouldn't work
6 for a good day anyway because Mr. Alison is going to be just a
7 little bit busy that week. But we can reset it for the 11th or
8 12th, or we can move it to January. So that's something to
9 think about and let me know your preferences.

10 Okay, we'll take a short recess and then we'll talk
11 about timing, and then we'll take the Hantgens' (phonetic)
12 motion.

13 **MR. UNIDENTIFIED:** Thank you, your Honor.

14 **THE CLERK:** All rise.

15 (A recess was taken from 11:03 a.m. to 11:22 a.m.)

16 **THE CLERK:** Bankruptcy court is now in session.

17 **THE COURT:** Be seated. Okay. What are your thoughts
18 about the date?

19 **MS. JARVIS:** Your Honor, we talked about it further
20 and we agree that it would be best to do it on December 19th.

21 **THE COURT:** Okay.

22 **MS. JARVIS:** We would also ask that the Court give us
23 some time on the 21st in case there are some issues. That
24 would give us an intervening day to try to --

25 **THE COURT:** Okay.

1 **MS. JARVIS:** -- deal with those.

2 **THE COURT:** That works out good. That way I can have
3 my motion calendar and still bring you back. Okay. So, let's
4 do it. Confirmation will be the 19th, then, and is it a
5 problem that ballots aren't due 'til the 14th?

6 **MS. CARLYON:** Well, we're -- well, the problem we've
7 got is -- let me try to walk through what we think the schedule
8 would work out as.

9 **THE COURT:** Okay. That'd be fine.

10 **MS. JARVIS:** And, you know, because we've talked to
11 our balloting agent, too. We know how long it will take. What
12 we would ask for is as we propose the voting record date be
13 November 6th.

14 **MS. CARLYON:** I'm going to hand this up, okay?

15 **MS. JARVIS:** Okay, great.

16 **MS. CARLYON:** I'm going to hand up a proposed
17 (indiscernible).

18 **THE COURT:** Yeah, sure.

19 **MS. JARVIS:** So, that's just for purposes of
20 determining, you know, who the ballots are sent to. Voting
21 record date would be November 6.

22 **THE COURT:** But -- oh. I see what you're saying.
23 Why don't you send ballots to everybody?

24 **MS. JARVIS:** Well, we will. I mean, we're sending
25 them to all the direct lenders, but like we have, for instance,

1 we have ballots that are set for certain classes and in some
2 instances they have amounts in them and that determination is
3 made as the 6th.

4 **COURT RECORDER:** I'm sorry. Someone must have on his
5 cell phone.

6 **THE COURT:** No, it's -- she's -- somehow it's that
7 microphone. Somehow you're touching the --

8 **MS. JARVIS:** Maybe if I move over this way.

9 **THE COURT:** Yeah.

10 **MS. JARVIS:** Okay.

11 **THE COURT:** There you go.

12 **MS. JARVIS:** All right. I'll try this one instead.

13 It's an order to -- because there are certain kind of moving
14 parts and the type of ballots that are sent out, some of them
15 are tailored to, you know, claims to make them easier to count
16 and tabulate.

17 **THE COURT:** All right.

18 **MS. JARVIS:** We just need to -- it doesn't mean that
19 other people can't get ballots and if they request them, they
20 will. And ballots will be sent to all direct lenders.

21 **THE COURT:** All right.

22 **MS. JARVIS:** So --

23 **THE COURT:** Well, ballots will be sent to everybody
24 who's got a proof of claim in or a schedule right now, right?

25 **MS. JARVIS:** Exactly.

1 **THE COURT:** Okay.

2 **MS. JARVIS:** Exactly.

3 **THE COURT:** Okay, that's fine.

4 **MS. JARVIS:** Then, the distribution of the
5 solicitation packages would be on November 20th.

6 **THE COURT:** All right.

7 **MS. JARVIS:** The objections to the plan and providing
8 evidence in support of those would be December 7th.

9 **THE COURT:** Now, the only problem I have with that is
10 -- and I'm not quite sure how we deal with this --

11 **MS. JARVIS:** Uh-huh.

12 **THE COURT:** Under the plan that I read -- maybe it's
13 been altered -- any direct lender that doesn't want to be
14 treated in that class five has to file an objection to plan.

15 **MS. JARVIS:** Yes.

16 **THE COURT:** So, does that make a difference on our
17 timing? And then, also, the problem of courtesy copies -- I
18 mean, as much as I don't want to waive courtesy copies -- we've
19 got the problem of them filing and they're not going to be
20 regular filers. So, is it possible to make the -- a few days
21 later for any direct lenders and indicate that all they have to
22 do is file their objection?

23 **MS. JARVIS:** In looking at this, part of it depends
24 on how soon before the confirmation hearing your Honor wants us
25 to present our evidence, because we will need some time. Right

1 now this is proposed that they -- the objectors -- present
2 objections and evidence on the 7th, so we have one week to then
3 file our evidence in response and our briefs in support of the
4 plan.

5 If we move that back, we would ask -- because it's --

6 **THE COURT:** I would be all right if you had it in by
7 the 14th. Your direct evidence and your --

8 **MS. JARVIS:** But could we move it back any further if
9 we're going to move back the objection deadline? That's why
10 I'm saying the time between the objections and our responses
11 and putting the evidence together, if it's too tight, then it's
12 just problematic for us to get everything --

13 **THE COURT:** Okay.

14 **MS. JARVIS:** -- done.

15 **THE COURT:** So --

16 **MS. JARVIS:** So, right now we have the seven days.
17 If we move back the objection deadline but we don't --

18 **THE COURT:** Well, most everything you need to do
19 could be done now for that matter, because you know what you
20 need to support confirmation. So, that could be done now.
21 It's just responding to any objections and, quite frankly, you
22 would -- I have no problem -- I mean, we're going to have to
23 have witnesses available anyway for cross examination. So, I'd
24 let you supplement the record with live testimony.

25 **MS. JARVIS:** Okay. I think that would work, your

1 Honor.

2 **THE COURT:** That probably would be better.

3 **MS. JARVIS:** Yeah.

4 **THE COURT:** I mean, it's going to make that
5 confirmation hearing longer, but it will save -- okay. So,
6 let's --

7 **MS. JARVIS:** Okay. So, let's move the deadline,
8 then, back for oppositions to the plan and direct evidence to
9 what would your Honor prefer? Like the 11th?

10 **THE COURT:** Yeah, let's do the 11th.

11 **MS. JARVIS:** Which I think is a Monday.

12 **THE COURT:** Uh-huh. By five? And it's probably
13 appropriate to say by five, since people can file
14 electronically now. And then, your briefs will be due the
15 15th. Let's do it this way. Your briefs in support of and
16 testimony in support of is due the 15th --

17 **MS. JARVIS:** Okay.

18 **THE COURT:** -- but you don't need to do testimony and
19 response. I'll let you do that at confirmation.

20 **MS. JARVIS:** Okay. And then, we have proposed that -
21 -

22 **THE COURT:** And we'll also have objections would be
23 due the 11th at 5:00 o'clock, too. Oh, that's what you said.

24 **MS. JARVIS:** Yeah. And the voting deadline we would
25 also propose be on the 11th.

1 **THE COURT:** That's fine.

2 **MS. JARVIS:** And we had proposed that their ballot
3 summary -- it's actually a Sunday, December 17th --

4 **THE COURT:** Well, you could make it the 18th, then.

5 **MS. JARVIS:** The 18th? Okay.

6 **MS. CARLYON:** All of the committees, I think, wish to
7 see it filed by Sunday night, so that we would have a day to
8 analyze this.

9 **THE COURT:** Okay. Well, that's fine. I mean, since
10 you can electronically file it, it's not a problem. Wait.
11 Sometimes the system is down on weekends.

12 Could we find out if the system is down on Sundays?

13 **(Court confers with clerk)**

14 **MS. JARVIS:** And your Honor, we tried to reach our
15 balloting agent to make sure that the 17th would work. I
16 think, given our past discussions, if the ballots are filed on
17 the 11th, the 17th would work, but we just want to make it
18 subject to making sure they're okay with that and can get that
19 done.

20 **MS. CARLYON:** And obviously, if this system's down,
21 they can distribute it to the committees and file it when the
22 system comes up.

23 **THE COURT:** Well, there you go. Sure.

24 **MS. JARVIS:** Yeah. I mean, we can distribute it to
25 the committees by the 17th and file it by the 18th.

1 **THE COURT:** That works.

2 **MS. JARVIS:** Okay. Let's do that.

3 **(Court confers with clerk)**

4 **MS. CARLYON:** So, it'll be filed by the 18th, I
5 assume at noon.

6 **THE COURT:** That's fine. And then, why don't we
7 start -- let's start a little later on the 19th. Let's start
8 at 10:00, to give you an extra hour to, you know, work things
9 out, talk, et cetera. And then, obviously, if you need more
10 time, I mean, but we'll start later, but if we say we're going
11 to start at 10:00 that'll give you a chance to go forward.

12 **MS. JARVIS:** A couple of other changes in the notice
13 that was sent out, because this goes with this, as well. We
14 did -- when we filed the notice, because it was a holiday
15 weekend, which we didn't realize it was a holiday weekend, we
16 accidentally omitted the injunction language that Rule 3016
17 says has to be put in the notice, so that has been included.

18 In addition, our balloting procedures propose that,
19 in essence, with the direct lender class, that in order to
20 avoid having to have all the direct lenders file something in
21 order to vote because the deadline's been extended to the 15th
22 and the debtor's having to go through and try to file
23 objections to deal with it, what we proposed as a balloting
24 procedure is that in that direct lender class, that each direct
25 lender, in essence, be given a dollar vote, so it's, in

1 essence, one vote per one direct lender.

2 So, that is part of the balloting and solicitation
3 procedures that we've suggested, as well.

4 **THE COURT:** Okay. I think we can do that, because
5 they're not creditors, so --

6 **MS. JARVIS:** And it prevents, you know, a lot of
7 unnecessary, you know, filings of --

8 **THE COURT:** Accounting.

9 **MS. JARVIS:** Yes.

10 **THE COURT:** And if they're -- what if they're in
11 different loans, does that make a difference? So, if one
12 lender is in five loans, they still get one vote?

13 **MS. JARVIS:** Yes, that is correct, your Honor.
14 That's what's proposed.

15 **THE COURT:** And the committee had no objection to
16 that?

17 **MR. GARMAN:** No, your Honor, that's consistent with
18 the loan service agreements. One document governs a variety of
19 loans.

20 **THE COURT:** All right. Then, again, since they're
21 not creditors, then we don't have -- I mean, in the traditional
22 sense. All right. That will work.

23 Okay. Good. What did you decide about that
24 settlement conference? Do you want to have that in January
25 instead?

1 **(Court confers with clerk)**

2 I mean, on one hand, you've got the standard issue up
3 in the air. It's on appeal, but --

4 **MS. JARVIS:** Yeah, I think January will be fine.

5 **THE COURT:** Okay. I mean, we could do it in
6 December, but, you know, we have to have a principal there, so
7 like I said, I think Mr. Allison might be just a little bit
8 busy.

9 **MS. JARVIS:** Yeah. I appreciate that, your Honor.

10 **THE COURT:** Okay. All right. Anything else, then,
11 on the disclosure statement?

12 **MS. JARVIS:** Just we have submitted an order to prove
13 the disclosure statement. In your packet that I gave you
14 today, we submitted that and we also have black lined against,
15 you know, like the procedures that you've previously seen so
16 you can see any changes. The only change we would need to make
17 with this now is putting in these new dates. We will do that
18 and then upload the order.

19 The order does have -- when we filed the notice, we
20 had put in a sample ballot. The order I was given a copy of
21 for your Honor this morning actually has ballots for each class
22 attached to it -- so, it's more complete -- as well as the
23 solicitation procedures and the notice. So, we would ask that
24 this be -- we can upload this probably later today --

25 **THE COURT:** Okay.

1 **MS. JARVIS:** -- and ask that this be entered right
2 away the notice approved.

3 **THE COURT:** Does the U.S. Trustee have any comments
4 or questions or concerns about the summary or the ballot?

5 **MR. LANDIS:** Not at this juncture, your Honor, we do
6 not.

7 **THE COURT:** Okay. Thank you.

8 **MS. CARLYON:** Just for the record, we had asked the
9 Court to approve the use of the alternate direct testimony
10 procedures from the local rules and I assume that's acceptable?

11 **THE COURT:** Yes. That is. My thought being that's
12 certainly acceptable -- my point was if you don't want to do
13 that, if it's faster just to put -- easier to put the witness
14 on, as well.

15 **MS. CARLYON:** Yeah, I mean, for the prima facie case
16 for confirmation --

17 **THE COURT:** That'll be alternate direct testimony.

18 **MS. CARLYON:** -- and the prima facie case for
19 objections, I think it's important that that be submitted in
20 advance through that procedure.

21 **THE COURT:** So, yes. Do we have -- all right. So, I
22 guess anybody that wishes to submit -- my concern is with the
23 direct lender, Mr. Smith, files an objection, I'll consider it,
24 whether or not there's -- you know, without making him file the
25 alternate direct testimony. But anybody who wishes to submit

1 evidence in opposition must submit the prima facie objection by
2 an affidavit with the opposition.

3 **MS. CARLYON:** Okay. Thank you, your Honor.

4 **MS. JARVIS:** Your Honor, just in clarification, the
5 order -- it would actually make sense if we actually upload it
6 tomorrow --

7 **THE COURT:** That's fine.

8 **MS. JARVIS:** -- because we have to do it with the
9 disclosure statement and, as you heard, there are a few issues
10 you raised that we'll correct in the disclosure statement.
11 Silver Point has a few issues that we need corrected, so we
12 will make those corrections, file the final with the order
13 tomorrow, if that works.

14 **THE COURT:** Okay.

15 **MS. KARASIK:** Your Honor, just one item in the order.
16 We are -- I believe all the committees and certainly the first
17 trustee committee are going to provide a letter in support of
18 the plan and those will be attached for them. I have ours if
19 the Court wants it before to take a look at it, or we can just
20 attach all of them together, whichever you --

21 **THE COURT:** Just make sure U.S. Trustee's office has
22 a copy so they get a chance to review it. If they have any
23 objections --

24 **MS. KARASIK:** They'll just be attached to the
25 disclosure statement order.

1 **THE COURT:** All right.

2 **MS. KARASIK:** Thank you, your Honor.

3 **THE COURT:** Uh-huh.

4 **(Court confers with clerk)**

5 Yeah, the 15th we will not use now.

6 **MS. JARVIS:** Your Honor, we would ask --

7 **THE COURT:** Or do you want to just keep it in case we
8 have --

9 **MS. JARVIS:** We would ask that -- sometimes they set
10 aside, so for instance, if there are some, you know,
11 evidentiary issues --

12 **THE COURT:** Okay.

13 **MS. JARVIS:** -- that we could, you know, use it for
14 preliminarily to start on the confirmation hearing.

15 **THE COURT:** All right. Let's do this, then. Let's
16 use the 15th at 9:30 for a status and I would allow the
17 attorneys to participate by telephone. You'll probably all be
18 here anyway.

19 Well, let's use the first status. Those people --
20 I'll allow telephonic participation by the attorneys, assuming
21 it's just a status hearing. I'd want somebody here locally to
22 come in and let me know what's going on. And then we could --
23 by then, you'll know what kind of oppositions you have.

24 **MS. JARVIS:** If there are any evidentiary issues like
25 the motions in limine or whatever --

1 **THE COURT:** Exactly.

2 **MS. JARVIS:** -- we can file those in advance and have
3 them heard at that point in time.

4 **MS. CARLYON:** Your Honor, given the problems we've
5 had with the dial-in, perhaps we'll set a different -- dial-in
6 with a different server for that date.

7 **THE COURT:** A different -- yes. I'm only going to
8 make it -- the only telephonic available is for those attorneys
9 who wish to participate in the proceeding.

10 **MS. CARLYON:** Is Ms. McPherson volunteering to do
11 that or shall I?

12 **MS. MCPHERSON:** We can do it, your Honor.

13 **THE COURT:** Okay.

14 **MS. CARLYON:** Thank you.

15 **THE COURT:** So, let's have a pre-confirmation
16 scheduling conference on the 15th.

17 **MS. JARVIS:** And would that be at 9:30?

18 **THE COURT:** You pick a time. If you'd rather do it a
19 little later -- 9:30's good?

20 **MS. JARVIS:** 9:30's fine.

21 **THE COURT:** Okay. Now, obviously, if you're already
22 in town and you're here -- it's easier if everybody's here --
23 but I don't want to make people travel for that.

24 **(Court confers with clerk)**

25 **THE COURT:** Okay. Good. All right. So, the last

1 thing we have is the motion by Mr. Sylvester?

2 Just so I know, these pink, rose-colored back ones
3 are the last version, right? Okay.

4 Okay. Go ahead.

5 **MR. SYLVESTER:** Good morning, your Honor, Jeffrey
6 Sylvester --

7 **THE COURT:** And anybody else who wishes to leave,
8 certainly may. Do you want to take a short recess so everybody
9 can -- or you can stay, whatever?

10 Let's take two minutes, so anybody that wants to
11 leave they certainly may.

12 **THE CLERK:** All rise.

13 **(A recess was taken from 11:37 a.m. to 11:46 a.m.)**

14 **THE CLERK:** Bankruptcy court is now in session.

15 **THE COURT:** Be seated. You know, I was thinking to
16 another compromise in the DFK. Did Ms. -- they all left,
17 didn't they?

18 **(No audible response)**

19 **THE COURT:** Well, you can find out for me. Mr. --

20 **MS. UNIDENTIFIED:** Mr. Charles is here.

21 **MS. CARLYON:** And Mr. Levinson just -- yes, I'll go
22 grab him. Marc?

23 **THE COURT:** After I told him he could then he did
24 leave like I told him he could.

25 You know, Judge Glover could probably do a settlement

1 conference to try and resolve these final differences. He
2 could do it December 11th or 12th. The thing is in order to do
3 it I have to kick off other settlement conferences. So if
4 you're at all interested let us know by oh, Thursday.

5 **MR. LEVINSON:** Thursday, this week?

6 **THE COURT:** If you're interested. It would be
7 December 11th or 12th. So just let us know by Thursday if one
8 of those days would work.

9 And how long -- if we did it, how long do you think
10 it would take? Do you think it would take a whole day?

11 **MR. LEVINSON:** Every settlement conference I've ever
12 been to nothing gets done until close to the end.

13 **MR. CHARLES:** Your Honor, so if it's scheduled for
14 four hours it will get done in the fourth hour. If it's
15 scheduled for six it will get done in the sixth.

16 **THE COURT:** Okay. He's very -- you haven't been
17 before him but he's pretty good at striking the whip so I think
18 four hours is probably --

19 **MR. LEVINSON:** I think I have been in front of him.

20 **THE COURT:** Okay.

21 **MR. LEVINSON:** I think he may have tried to settle
22 some EVT issues.

23 **THE COURT:** Okay.

24 **MR. LEVINSON:** I could be wrong.

25 **MS. CARLYON:** He did a lot of the preference.

1 **THE COURT:** Right.

2 **MR. LEVINSON:** Yes.

3 **THE COURT:** Right. So that way we wouldn't have to
4 change as many things if we gave you either the morning. Well,
5 you just -- you've got to let us know by Thursday --

6 **MR. CHARLES:** Who should we tell?

7 **THE COURT:** -- because we have to kick other people
8 off.

9 **MR. CHARLES:** I'm sorry, your Honor. Who should we
10 tell?

11 **THE COURT:** Ms. Workheiser.

12 **MR. CHARLES:** We can do this.

13 **THE COURT:** Okay.

14 **MR. LEVINSON:** We will discuss.

15 **THE COURT:** Okay. And what he requires and I require
16 is that the person with settlement authority be there as well.
17 This person with settlement authority can't be on the
18 telephone. It has to be in person because the whole point and
19 I agree when you do settlement conferences you -- the person in
20 charge has got to see the reality.

21 **MR. CHARLES:** Here's our problem. We have two
22 committees and we have wildly differing views of issues which
23 interrelate. So unless you said we have to bring the whole
24 committee together which has not ever happened in my experience
25 for just my committee, it is not possible for us to bring

1 decision makers. We can get parameters from our clients but
2 it's -- unless I don't --

3 **THE COURT:** Isn't there a committee chair?

4 **MR. CHARLES:** Sure. But the problem is you have to
5 know within some relevant parameters kind of where you're
6 likely to end up and then get authority to do that on literally
7 probably four to six moving pieces which move each other.

8 **THE COURT:** I think he's alright with that but he
9 wants somebody who's in charge.

10 **MS. CARLYON:** Typically, when we have a committee
11 just as if you have a board or a government agency, we send
12 someone who is charged with having authority to settle --

13 **THE COURT:** Subject to --

14 **MS. CARLYON:** -- subject to the yes vote of the group
15 and have the group standing by to give that yes vote during the
16 conference.

17 **THE COURT:** Right.

18 **MR. CHARLES:** I cannot get my nine -- Mr. Landis
19 blessed me with nine really busy talented people who I couldn't
20 say to you are available anytime on the phone for --

21 **THE COURT:** Well, I think he'd be flexible to say,
22 "All right. This is the deal but get back to us in 48 hours."

23 **MR. LEVINSON:** Fine.

24 **MR. CHARLES:** We can live with that and I apologize
25 for interrupting.

1 **MR. LEVINSON:** No, no, my situation is the same,
2 that's fine, except my committee is smaller.

3 **THE COURT:** Okay. So let's do that. If you agree to
4 it and -- I mean, I would just order it but there's no sense
5 ordering settlement conferences that just waste everybody's
6 time and you've done very well yourselves but if you agree to
7 it, it will be either the 11th or the 12th. You've got to let
8 us know by Thursday at 5:00. What is Friday?

9 **MR. CHARLES:** And a.m. or p.m. at this point on
10 either day?

11 **THE COURT:** You tell us what you prefer.

12 **MR. CHARLES:** Okay.

13 **THE COURT:** It's probably easier to kick off -- I've
14 got two set for the morning I'd have to move and three in the
15 afternoon each day. The 11th is probably better because those
16 are my cases which I'd feel a little better about moving rather
17 than Judge Mark Bell's.

18 **MR. CHARLES:** I won't tell him.

19 **THE COURT:** Okay.

20 **MR. CHARLES:** We will get back to your courtroom
21 deputy by Thursday --

22 **THE COURT:** Right.

23 **MR. CHARLES:** -- if not sooner.

24 **THE COURT:** Thanks.

25 **MR. LEVINSON:** Thank you, your Honor.

1 **THE COURT:** Okay. All right. Fine. Mr. Sylvester?

2 **MR. SYLVESTER:** Good morning, your Honor. Jeffrey
3 Sylvester on behalf of USA Commercial Real Estate Group.

4 Your Honor, this is the Real Estate Group's motion to
5 enforce the order allowing the debtors to distribute funds
6 received by the debtors from the various borrowers for
7 distribution to the Direct Lenders. The Court will recall, of
8 course, that the debtors requested that this Court authorize
9 the release of those funds directly to the Direct Lenders net
10 of whatever servicing fee was due and owing pursuant to the
11 terms and provisions of the loan servicing agreement.

12 The motion that was filed by the debtors further
13 provided that the debtors would supplement the record and
14 provide to the Direct Lenders sort of a statement as of June
15 30th as to the amount of the Direct Lenders loan and the
16 amounts received by the borrowers for distribution to the
17 Direct Lenders.

18 Obviously, Real Estate Group didn't oppose that
19 motion and pursuant to the terms and conditions of the debtors
20 motion in fact received the anticipated distribution from the
21 debtors and we've attached that anticipated distribution to the
22 reply memorandum.

23 The Court, of course, approved the debtors' motion to
24 distribute funds and allowed the debtors to make those
25 distributions to those Direct Lenders as set forth in those

1 proposed statements.

2 Unfortunately, Real Estate Group didn't receive its
3 distribution although it was advised by debtors that they would
4 be receiving the monies as the funds had actually been put in a
5 check form. When Real Estate Group didn't receive its
6 distribution I contacted counsel then for the Creditors
7 Committee and inquired as to why it hadn't yet received its
8 monies and ultimately after several conversations the response
9 was, "Well, there may be claims against the principals of Real
10 Estate Group and, therefore, out of an abundance of caution and
11 without further order of the Court, we're not going to release
12 those funds."

13 As a result, your Honor, we filed the motion.

14 **THE COURT:** Well, USA Commercial Real Estate Group
15 isn't an entity is it?

16 **MR. SYLVESTER:** It is.

17 **THE COURT:** It's an incorporated entity?

18 **MR. SYLVESTER:** It is and I think, as an aside, this
19 Court granted the Unsecured Creditors Committee's application
20 for a 2004 examination of which went forward on Thursday of
21 last week. And in connection with that, a subpoena was issued
22 with respect and requested and received the corporate documents
23 including the Articles of Incorporation, the bylaws, and the
24 minutes of shareholders and directors.

25 It is a duly formed Nevada corporation and I will

1 concede to you it is owned by Mr. Milanowski and Mr. Hantges.

2 The motion was filed and the opposition that we
3 received, in essence, echoed the comments of the confidential
4 Creditors Committee indicating that there may be claims against
5 the principals of USA Commercial Real Estate Group and that out
6 of an abundance of caution and without further order of the
7 Court no funds will be released.

8 There was a joinder filed by the Unsecured Creditors
9 Committee indicating that there should be some further
10 investigation as to the business transactions, if any, by and
11 between Real Estate Group and the debtors.

12 Again, the 2004 examination was commenced and
13 concluded and the documents were produced.

14 Real Estate Group has direct loans that advocate
15 \$750,000 and while the proposed distribution is nominal in
16 respect to, of course, the case as a whole and its direct
17 loans, it is still an amount that the direct lender, USA
18 Commercial Real Estate Group, believes it is entitled to
19 receive.

20 **THE COURT:** Well, how do we know that money didn't
21 come from USA Commercial Mortgage?

22 **MR. SYLVESTER:** There was some, again, investigation,
23 your Honor, at the time of the 2004 examination.

24 **THE COURT:** But you've offered no evidence of that?

25 **MR. SYLVESTER:** I haven't. I haven't offered any

1 evidence of that, your Honor, and I don't think that the
2 Creditors Committee and counsel are suggesting that those funds
3 belonged to any one of these debtors, at least that's not what
4 the opposition is that I have seen and I haven't seen any
5 communication in that regard. There was testimony in 2004 that
6 it came from commissions from real estate transactions and
7 that's the evidence that we have.

8 The point that I'm making, your Honor, is that we
9 don't think it's property of the estate and having heard the
10 comments of Mr. Garman and the agreement reached with the
11 debtors subject to confirmation, these funds will not be deemed
12 property of the bankruptcy estate and I'm not going to stand
13 before this Court and suggest that she issue an order as to
14 whether it is or isn't. I'm assuming that will be a matter for
15 confirmation. But there is no right of setoff because the
16 funds that are now held, the debtors and the Unsecured
17 Creditors Committee have not taken the position that those --
18 at least in opposition to this motion -- that those funds are,
19 in fact, property of the estate. What they are suggesting is
20 they may have claims against the principals and that may or may
21 not be true but they haven't asserted a claim against USA
22 Commercial Real Estate Group; they haven't intimated that a
23 claim exists, and there is no evidence to suggest that there is
24 a claim by the debtor's against Real Estate Group.

25 **THE COURT:** But you're not objecting to the netting

1 aspect of this?

2 **MR. SYLVESTER:** No, your Honor, we didn't and, as a
3 matter of fact, the amount in the reply or the statement that
4 was forwarded I'm assuming was net of the loan servicing fee.
5 These direct loans were pursuant to a loan servicing agreement
6 and we haven't taken the position today that they're not
7 entitled to those fees or that those sums should be netted out
8 of the amounts received from the borrowers.

9 Again, there's no evidence to suggest that set off is
10 appropriate. They haven't alleged claims. It is a duly formed
11 Nevada corporation. There's no claims of an alter ego such
12 that they can reach the assets of Mr. Milanowski and
13 Mr. Hantges and, frankly, to hold those funds is, I think,
14 tantamount to writ attachment.

15 And as a result, we're simply asking the Court to
16 compel the debtors to release the funds that it has previously
17 indicated it would be released pursuant to the Court's order
18 permitting distribution.

19 **THE COURT:** Okay. Opposition?

20 **MS. MCPHERSON:** Your Honor, as you recall, the
21 debtors did file the motion for permission for the proposed
22 distributions to be made and, as set forth in the motion, the
23 debtors do say that they are not waiving any rights or
24 arguments that they have. And so, the statements did go out to
25 everybody and actually right now Mesirow is holding

1 appropriately 137,000 for USA Real Estate Group and we are in
2 the process of learning more about USA Commercial Real Estate
3 Group.

4 We do know that it's owned solely by Mr. Milanowski
5 and Tom Hantges and we believe that they are insiders and we
6 are trying to determine whether there are additional claims
7 against them. I think it's -- would certainly be appropriate
8 to find that their claims could be equitably subordinated
9 because of the prepetition irregularities that went on and the
10 effect that those prepetition irregularities had on other
11 claimants.

12 And so as a result of the fact that USA Commercial
13 Real Estate Group is comprised of insiders and the prepetition
14 conduct that went on, those monies were just not distributed
15 and we would need a --

16 **THE COURT:** Does the plan -- I know the plan provides
17 for equitable subordination. Does it include -- does the
18 definition of "insider" go so far as to include this claim? So
19 when the plan is written that claim will be subordinated?

20 **MS. McPHERSON:** I believe the plan refers to
21 nondebtor entities as potential claims that could be
22 subordinated.

23 **THE COURT:** Okay. All right.

24 **MS. McPHERSON:** Thank you.

25 **THE COURT:** Any other opposition?

1 **MR. CHARLES:** Your Honor, Rob Charles on behalf of
2 the Unsecured Creditors Committee.

3 Counsel has accurately represented that we did
4 conduct a 2004 examination last week. We have not yet had it
5 transcribed and I did not want to incur the expense of an
6 expedited transcript.

7 But to more directly answer one of the questions you
8 asked counsel which was "Has Commercial Real Estate Group
9 demonstrated the source of the funds used to identify as
10 loans?" Because all that you to identify them as a lender is
11 what any lender has, a name on a loan document. But for some
12 reason there is an understandable curiosity as to how an entity
13 owned by Hantges and Milanowski where Hantges is the broker and
14 is the president, Milanowski is the vice president, it has no
15 employees and Milanowski is running the deal, how that -- how
16 it came to have money.

17 Essentially, Mr. Milanowski told me, "Trust me, we
18 wrote checks through the trust -- or the trust account that was
19 used for investors, investor trust account, not the collection
20 account," and we have not have documented or confirmed by
21 Mesirow or by the debtors that, in fact, Commercial Real Estate
22 Group money went through that account, nor do we know the
23 source of those funds. Mr. Milanowski didn't know. He thought
24 perhaps they were commissions; he wasn't sure. And, you know,
25 like any human being, I'm sure his memory was difficult and

1 infallible. He essentially wouldn't tell us anything other
2 than what was on pieces of paper in front of him and there was
3 no documentation either as to demonstrating that there were, in
4 fact, funds loaned or what the source of those funds were.

5 So I can't tell you that I know the converse. I
6 can't tell you that they didn't put money in or that they stole
7 the money for these loans. I don't know that. I just don't
8 know as we stand here today.

9 **THE COURT:** Okay. All right. Reply?

10 **MR. SYLVESTER:** Very briefly, your Honor.

11 The opposition that were filed by the committee and
12 by the debtors said that there may be claims against the
13 principals of the Real Estate Group but they have not
14 articulated what those claims are and they have not suggested,
15 at least in the pleadings filed before the Court, that the
16 funds used to fund these direct loans were property of the
17 debtor.

18 Obviously, the debtor is in possession of these
19 business records, including but not limited to the trust fund
20 account, and could have, if it was so inclined, determine
21 whether or not funds were actually advanced and then loaned to
22 the borrowers.

23 On the record before the Court today is simply an
24 undisputed fact that my client is a Direct Lender, that the
25 debtors now holding proceeds received from the borrowers

1 pursuant to the servicing agreement, and that the Court has
2 authorized those funds to be released.

3 And I appreciate the concern that the Court has about
4 the claims of the estates against the principals but as this
5 corporation duly formed presently stands before this Court
6 there are no claims against it and there has been no evidence
7 to suggest that there's a right of offset or that there is some
8 mutuality that would permit a setoff of the funds now held by
9 the debtors against the funds due and owing USA Real Estate
10 Group.

11 **THE COURT:** Well, I think it's -- I'm going to defer
12 this until after confirmation. There are some concerns I have
13 that this is nothing more than an attachment brought without a
14 lawsuit. But by the same token, it seems to me the plan will
15 take care of this through Class A-7 and/or through that
16 process. So I think it would premature for me to decide this
17 prior to confirmation and, of course, in the meantime another
18 lawsuit's brought and attachments sought. That ends that issue
19 there and/or if it's resolved that this is a subordinated claim
20 that resolves that.

21 So we'll set it down for our first hearing after
22 confirmation which is -- would be January 3rd.

23 **MR. UNIDENTIFIED:** Nine thirty?

24 **THE COURT:** Yes.

25 **MR. UNIDENTIFIED:** Thank you, your Honor.

1 **THE COURT:** Although, obviously, you know, we'd go in
2 our order so it may get moved. All right. Thank you.

3 So that's all we have for today? Okay. I'm sorry.

4 **MS. JARVIS:** One cleanup matter. The orders, the few
5 orders for Mesirow, and Ray, Quinney, and Schwartzer and
6 McPherson --

7 **THE COURT:** They were held because of the problems
8 that somebody raised.

9 Have they been resolved?

10 **MS. JARVIS:** Well, I think all of the issues are
11 resolved except there -- with respect to Mesirow and Ray,
12 Quinney. I think there was one issue that was briefed with
13 respect to Schwartzer and McPherson although I think given the
14 agreements that have been reached under the plan I'm not sure
15 that that really is even an issue. But in any case, that has
16 been fully briefed and is ready for your Honor to enter.

17 **THE COURT:** You know, I'm not going to have to decide
18 that brief issue.

19 Can you just reach some kind of resolution in the
20 meantime so at least they can get paid and defer the
21 allocation?

22 **MS. CARLYON:** Absolutely. It's been suggested by a
23 number of parties that the agreement that was reached with the
24 debtors' professionals, which is basically an interim, nine and
25 one-half percent being paid out of the funds, be applied across

1 the board to all of debtors' professionals. That is the order
2 that's requested by Ray, Quinney. Everyone is in agreement.
3 That is the order being requested by Mesirow. Everyone is in
4 agreement.

5 For some reason, Schwartzer, McPherson has an odd
6 amount for the interim and just -- let's just do the same nine
7 and a half percent on an interim basis. It's without prejudice
8 and confirmation will resolve all of this anyway.

9 **THE COURT:** Okay.

10 **MS. CARLYON:** And that way everybody can get paid
11 something now and we can worry about, you know, the \$5,000
12 difference or whatever at a later date.

13 **THE COURT:** Okay.

14 **MS. MCPHERSON:** Your Honor, we are talking about a
15 small amount and that's why we find it curious that this has
16 become such an issue.

17 **THE COURT:** Well, can you just upload the -- I mean,
18 if you want to wait until I resolve this that's fine. But if
19 you want to re-upload the order with that, without prejudice,
20 it's your choice. I am not going to get to it because I've got
21 other hearings and things before now. I mean, I'm not going to
22 -- I don't know how to resolve it without spending an hour
23 listening to the transcripts. So you decide what you want to
24 do.

25 **MS. MCPHERSON:** Okay, your Honor. We'll discuss it.

1 Thank you.

2 **THE COURT:** Okay.

3 **MS. JARVIS:** And, your Honor, we just --

4 **THE COURT:** So, I'll tell you what. I'm going to
5 trash all those orders and you can re-upload the three.

6 **MS. JARVIS:** No, actually the orders for Ray, Quinney
7 and Mesirow, as Ms. Carlyon said, are -- they're agreed to.

8 **THE COURT:** All right.

9 **MS. JARVIS:** There's no issue. It's just --

10 **MS. CARLYON:** They were completely approved.

11 **MS. JARVIS:** Yes, those are done.

12 **THE COURT:** Okay.

13 **MS. JARVIS:** They don't need to be uploaded. They're
14 approved.

15 **THE COURT:** Okay.

16 **MR. GARMAN:** Your Honor, we didn't have an objection
17 to it but Mesirow has not paid the remainder of the
18 professionals any -- none of the Knudson (phonetic) order or
19 the allowed fee applications because they've decided that they
20 wanted to wait until their order was approved and that we find
21 is inappropriate. So we'd like this resolved and we'd like the
22 fees that have already been authorized by this Court to be paid
23 to the rest of the professionals to go out as soon as
24 possible.

25 **MS. JARVIS:** I think, your Honor, it's an issue of

1 with respect to the money coming out of USA Commercial
2 Mortgage. There has -- there's not going to be a complete
3 payment; it's going to be a pro rata payment so everything
4 needs to be determined so that can be done. So it is important
5 that these orders get entered so we can get this paid.

6 **THE COURT:** Okay.

7 **MS. JARVIS:** Thank you, your Honor.

8 **THE COURT:** Okay. All right. Thank you then.

9 **MS. CARLYON:** Thank you, your Honor.

10 **THE CLERK:** All rise.

11 **(Proceeding was adjourned at 12:06 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Toni Hudson", is written over a horizontal line.

Signed

July 12, 2010

Dated

TONI HUDSON, TRANSCRIBER